

# CITY COUNCIL

1520 AVENUE K



DATE: 2/13/2012  
CALL TO ORDER: 7:00 p.m.  
INVOCATION: Pastor Barry Gin  
Plano Chinese Alliance Church  
PLEDGE OF ALLEGIANCE: Boy Scout Troop 219  
Christ Church Plano

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p>THE MISSION OF THE CITY OF PLANO IS TO PROVIDE OUTSTANDING SERVICES AND FACILITIES, THROUGH COOPERATIVE EFFORTS WITH OUR CITIZENS THAT CONTRIBUTE TO THE QUALITY OF LIFE IN OUR COMMUNITY.</p> <p><b>The City Council may convene into Executive Session to discuss posted items in the regular meeting as allowed by law.</b></p> <p><b><u>PROCLAMATIONS &amp; SPECIAL RECOGNITION</u></b> Presentation: Billie Clayton, 25th Anniversary with the City of Plano</p> <p><b><u>CERTIFICATES OF APPRECIATION</u></b></p> <p><b><u>Building Standards Commission</u></b> Gary Johnston</p> <p><b><u>Photographic Traffic Signal Advisory Committee</u></b> Greg Price</p> <p><b><u>COMMENTS OF PUBLIC INTEREST</u></b> <b><u>This portion of the meeting is to allow up to five (5) minutes per speaker with thirty (30) total minutes on items of interest or concern and not on items that are on the current agenda. The Council may not discuss these items, but may respond with factual or policy information. The Council may choose to place the item on a future agenda.</u></b></p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><b><u>CONSENT AGENDA</u></b>  <b><u>The Consent Agenda will be acted upon in one motion and contains items which are routine and typically noncontroversial. Items may be removed from this agenda for individual discussion by a Council Member, the City Manager or any citizen. Citizens are limited to two (2) items and discussion time of three (3) minutes each.</u></b></p> <p><b><u>Approval of Minutes</u></b></p> <p>(a) January 23, 2012 January 30, 2012</p> <p><b><u>Approval of Expenditures</u></b></p> <p><b>Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)</b></p> <p>(b) Bid No. 2012-47-B for the 2011-2012 Pavement Maintenance Phase I – Plano Parkway and Custer Road, Project No. 6170 to Laughley Bridge &amp; Construction, Inc., in the amount of \$870,258 and authorizing the City Manager to execute all necessary documents.</p> <p>(c) CSP No. 2012-44-B for the construction of Aquatic Center Renovation to J.C. Commercial, Inc., in the amount of \$4,260,777 and authorizing the City Manager to execute all necessary documents.</p> <p>(d) Bid No. 2012-40-C for a one (1) year contract with three (3) City optional renewals for Irrigation Repair Parts for the Parks Department to Irrigator's Supply Inc., Longhorn Inc., and Professional Turf Products LP, in the estimated annual amount of \$65,000 and authorizing the City Manager to execute all necessary documents.</p> <p>(e) Bid No. 2012-32-C for a one (1) year contract with three (3) City optional renewals to purchase Reinforcing Steel from BARNSCO Inc. and CMC Construction Services Inc., in an estimated amount of \$63,850 to be utilized by Public Works, and authorizing the City Manager to execute all necessary documents.</p> <p><b>Purchase from an Existing Contract</b></p> <p>(f) To approve a contract for the purchase of maintenance and support for Ironport Software, in the amount of \$68,624 from Solid Border, Inc., through a Department of Information Resources (DIR) Contract, and authorizing the City Manager to execute all necessary documents. (DIR-SDD-1123)</p> <p>(g) To approve the purchase of a Court Management System in the amount of \$970,278 from Tyler Technologies, Inc., through an existing contract and authorizing the City Manager to execute all necessary documents. (City of Carrollton RFP #07-014)</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><b>Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)</b></p>	
(h)	<p>To approve a Professional Services Agreement by and between the City of Plano and CP&amp;Y, Inc., in the amount of \$190,000 for Plano Park 1 – Street Reconstruction and Water Main Replacement project and authorizing the City Manager to execute all necessary documents.</p>	
(i)	<p>To approve a Landscape Architecture Services Agreement by and between the City of Plano and la terra studio, inc., in the amount of \$58,723 for Improvements to Carpenter Park and authorizing the City Manager to execute all necessary documents.</p>	
(j)	<p>To approve a Landscape Architecture Services Agreement by and between the City of Plano and la terra studio, inc., in the amount of \$177,085 for Improvements to High Point Park and authorizing the City Manager to execute all necessary documents.</p>	
	<p><b>Approval of Contract Modification</b></p>	
(k)	<p>To approve and authorize Contract Modification No. 5 to increase the contract cap in the amount of \$2,414,290 for the purchase of water meters and installation services from HD Supply Waterworks Ltd to be utilized by Public Works, Customer &amp; Utility Services, and Warehouse, and authorizing the City Manager to execute all necessary documents (2007-223-B).</p>	
	<p><b>Reimbursement of Oversize Participation</b></p>	
(l)	<p>To approve and authorize reimbursement to TOG Development I, LLC for oversize participation for public improvements associated with the construction of Bright Star Way and a portion of Oceanview Drive in the amount of \$131,837 and to TOG Development II, LLC for oversize improvements associated with the construction of a portion of Oceanview Drive in the amount of \$4,811.</p>	
	<p><b><u>Adoption of Resolutions</u></b></p>	
(m)	<p>To approve the terms and conditions of a Corporate Sponsorship Agreement by and between Texas Health Presbyterian Hospital Plano and the City of Plano; approving its execution by the City Manager; and providing an effective date.</p>	
(n)	<p>To approve the Investment Portfolio Summary for the quarter ending December 31, 2011 and providing an effective date.</p>	
(o)	<p>To repeal Resolution No. 2011-6-23(R) approving the terms and conditions of an agreement by and between the City of Plano, Texas, Collin County, Texas, Internap Network Services Corporation, a Delaware corporation and Behringer Harvard 1221 Coit, LP, a Texas limited partnership; providing for a business personal property and real property tax abatement; and authorizing its execution by the City Manager; and providing an effective date.</p>	
(p)	<p>To appoint James D. Shields and Lori A. Leu to serve for two year terms as investigators as required by Section 2-104 of the Code of Conduct of the City of Plano; and providing an effective date.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><b><u>Adoption of Ordinances</u></b></p> <p>(q) To abandon all right, title and interest of the City, in that certain 15-foot wide Sanitary Sewer Easement recorded in Instrument No. 20111026001150700, Official Public Records of Collin County, Texas, and being situated in the Collin County School Survey, Abstract No. 153, which is located within the city limits of Plano, Collin County, Texas; quitclaiming all right, title and interest of the City in such easement to the abutting property owner, Florida Etoile, Inc., to the extent of its interest; authorizing the City Manager to execute any documents deemed necessary; and providing an effective date.</p> <p>(r) To amend Chapter 14, Offenses-Miscellaneous, of the Code of Ordinances of the City of Plano to add a new Article XI, Vulnerable Road Users, to regulate the conduct of motor vehicle operators while passing cyclists on a highway or street and providing a penalty; and providing a repealer clause, a savings clause, a severability clause, a publication clause and an effective date.</p> <p>(s) To repeal Ordinance No. 2011-6-22 designating a certain area within the City of Plano, Texas, as Reinvestment Zone No. 123 for tax abatement consisting of a 7.255 acre tract of land located in the Martha McBride Survey, Abstract No. 553, Collin County, in the City of Plano, Texas; and providing an effective date.</p> <p>(t) To adopt and enact Supplement Number 97 to the Code of Ordinances for the City of Plano; providing for amendment to certain sections of the Code; and providing an effective date.</p>	
	<p><b><u>ITEMS FOR INDIVIDUAL CONSIDERATION:</u></b></p> <p><b><u>Public Hearing Items: Applicants are limited to fifteen (15) minutes presentation time with a five (5) minute rebuttal, if needed. Remaining speakers are limited to thirty (30) total minutes of testimony time, with three (3) minutes assigned per speaker. The presiding officer may extend these times as deemed necessary.</u></b></p> <p><b><u>Non-Public Hearing Items: The Presiding Officer may permit limited public comment for items on the agenda not posted for a Public Hearing. The Presiding Officer will establish time limits based upon the number of speaker requests, length of the agenda, and to ensure meeting efficiency, and may include a cumulative time limit. Speakers will be called in the order cards are received until the cumulative time is exhausted.</u></b></p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(1)	<p>Public Hearing and consideration of an Ordinance as requested in Zoning Case 2011-35 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to rezone 26.5± acres located 348± feet south of State Highway 121 and 698± feet west of Gillespie Drive in the City of Plano, Collin County, Texas, from Regional Employment and Regional Commercial to Single-Family Residence-6; directing a change accordingly in the official zoning map of the City; and providing a publication clause, a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: Haggar-Jezzeen Partners</p> <p><u>Municipal Center is wheelchair accessible. A sloped curb entry is available at the main entrance facing Municipal Avenue, with specially marked parking spaces nearby. Access and special parking are also available on the north side of the building. Training Room A/Building Inspections Training Room are located on the first floor. Requests for sign interpreters or special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 972-941-7120.</u></p>	



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		02/13/2012		
Department:		City Manager's Office		
Department Head		Bruce Glasscock		
Agenda Coordinator (include phone #): <b>Melinda White X7548, Cindy Pierce X5161</b>				
<b>CAPTION</b>				
Presentation: Billie Clayton, 25 <sup>th</sup> Anniversary with the City of Plano				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
<b>FUND(S):</b>				
<b>COMMENTS:</b>				
<b>SUMMARY OF ITEM</b>				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	

**PLANO CITY COUNCIL  
PRELIMINARY OPEN MEETING  
January 23, 2012**

**COUNCIL MEMBERS PRESENT**

Phil Dyer, Mayor  
Pat Miner, Mayor Pro Tem  
Lissa Smith, Deputy Mayor Pro Tem  
Ben Harris  
André Davidson  
James Duggan  
Patrick Gallagher  
Lee Dunlap

**STAFF PRESENT**

Bruce Glasscock, City Manager  
Frank Turner, Deputy City Manager  
LaShon Ross, Deputy City Manager  
Diane C. Wetherbee, City Attorney  
Diane Zucco, City Secretary

Mayor Dyer called the meeting to order at 5:08 p.m., Monday, January 23, 2012, in Training Room A of the Municipal Center, 1520 K Avenue. A quorum was present. Mayor Dyer then stated that the Council would retire into Executive Session in compliance with Chapter 551, Government Code, Vernon's Texas Codes, Annotated, in order to consult with an attorney and receive Legal Advice and discuss Litigation, Section 551.071; and to receive information regarding Economic Development, Section 551.087 for which a certified agenda will be kept in the office of the City Secretary for a period of two years as required.

Mayor Dyer reconvened the meeting back into the Preliminary Open Meeting at 6:01 p.m.

**Consideration and action resulting from Executive Session discussion**

No items were brought forward.

**Water Restriction Update**

Director of Policy and Government Relations Israelson spoke regarding the coordinated efforts between Public Works, Public Information, Sustainability and Environmental Waste and Customer and Utility Services in implementing Stage 3 Watering restrictions on November, 1, 2011. He spoke regarding magnetic signage for City vehicles, website updates, meetings with the school district, utility bill information, Plano Television Network videos and courtesy warnings. Mr. Israelson advised that the total cost thus far has been \$31,786 and spoke to patrol efforts and compliance. He reviewed the level of compliance by the City of Plano, reservoir levels/triggers for each stage, and overdraft rights for Lake Lavon. Mr. Israelson responded to the Council, advising that without two negative tests for zebra mussels, water cannot be pumped from Lake Texoma. He advised that water district staff recommends consideration of Stage 4 in May 2012, reviewed further restrictions and spoke to making a request that the water district fund rebates for cities to encourage conservation projects.

City Manager Glasscock responded to the Council regarding the district's options to ensure compliance from municipalities and Plano's projected losses in Stage 4 of \$20 million in revenue, \$9 million in additional expenses plus the cost of district projects and rate increases. Deputy Mayor Pro Tem Smith requested Staff express concerns to the North Texas Municipal Water District Board regarding those entities that are not doing their part to conserve. Council Member Harris requested information regarding the impact of East Fork Interceptor Project and Mr. Glasscock advised that the water district will be requested to bring additional information forward at the next Council Meeting. Mr. Israelson spoke to the presence of zebra mussels in Lake Lavon and advised that water from this source is directly pumped through filtering without additional transport. Mr. Glasscock spoke to additional liabilities related to the Lacey Act should the district transport the mussels downstream from Lake Texoma. North Texas Municipal Water District Board Member Yancey advised that the board will meet on January 26 and spoke to efforts to purchase raw water from other entities.

### **DART Report**

Dart Board Representative Loretta Ellerbe stated concern regarding the extent of service provided at the Jack Hatchell Park & Ride, advised she would gather information on proposals and spoke to service reductions on bus routes when ridership is down. She responded to Council Member Dunlap, advising that proposed services in non-DART entities will not result in a transfer of equipment and advised regarding the board's position that those outside the system will pay the full, unsubsidized costs. Ms. Ellerbe spoke to the opening of the Northwest Plano Park & Ride in July 2012, anticipation of reverse commuters to Legacy Town Center and implementation of paid parking demonstrations at the Parker Road and N. Carrollton-Frankford Stations. She spoke to potential changes to paratransit services through a new contract reducing subsidies and offering services with smaller vehicles.

### **Comprehensive Monthly Financial Report**

Director of Finance Tacke advised that the December 2011 report finds General Fund revenues up slightly as a percentage of budget as compared to last year while Water and Sewer revenues are down slightly. She stated that actual General Fund revenues are up \$7.3 million, primarily due to an increase in ad valorem taxes and an increase in sales tax resulting from an audit adjustment. Ms. Tacke advised that General and Water & Sewer Fund expenditures are up slightly as a percent of budget, spoke to increases in both Municipal Drainage revenues and expenses, and advised that the unemployment rate is down to 6.3%.

### **Personnel: Appointment – Cultural Affairs Commission**

Upon a motion made by Council Member Gallagher and seconded by Council Member Davidson, the Council voted 8-0 to appoint Lisa Foster to an interim term.

### **Car Allowance Update**

City Manager Glasscock spoke to car allowances traditionally used to: subsidize employee expenses incurred by using their own personal vehicles while conducting City business; avoid having to increase the City's fleet size; and negotiate for certain executive positions. He spoke to recommendations effective February 13, 2012, which include establishment of three categories of car allowances: 1) Executive/Department Heads; 2) Field Personnel; and 3) Civil Service Management and advised that allowances will be reviewed annually and approved by the City Manager. Mr. Glasscock further stated that employees not falling into one of the above categories will have their current allowance rolled into their base salary (immediate reduction of 36 allowances with an additional 9 upon attrition of current person in the position) and will not be eligible for mileage reimbursement unless they can provide documentation that shows actual mileage exceeds the amount of their annual allowance. He advised that Staff who receives a car allowance will not be eligible for mileage reimbursement unless, when travelling overnight, the cost of driving is less than the cost of an airline ticket; and stated that while there are no expected immediate budget savings from these modifications, over time and through attrition, an annual reduction of \$176,000 from current compensation packages is anticipated. The Council indicated concurrence with the recommendation.

### **Council items for discussion/action on future agendas**

No items were discussed.

### **Consent and Regular Agendas**

No items were discussed.

Nothing further was discussed. Mayor Dyer adjourned the Preliminary Meeting at 6:48 p.m.

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**Phil Dyer, MAYOR**

ATTEST

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Diane Zucco, City Secretary

**PLANO CITY COUNCIL**  
**January 23, 2012**

**COUNCIL MEMBERS PRESENT**

Phil Dyer, Mayor  
Pat Miner, Mayor Pro Tem  
Lissa Smith, Deputy Mayor Pro Tem  
Ben Harris  
André Davidson  
James Duggan  
Patrick Gallagher  
Lee Dunlap

**STAFF PRESENT**

Bruce Glasscock, City Manager  
Frank Turner, Deputy City Manager  
LaShon Ross, Deputy City Manager  
Diane C. Wetherbee, City Attorney  
Diane Zucco, City Secretary

Mayor Dyer convened the Council into the Regular Session on Monday, January 23, 2012, at 7:01 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. A quorum was present.

Reverend Michael Boone of Christ Church Plano led the invocation and Cub Scout Pack 25, Den 1 of Custer Road United Methodist Church led the Pledge of Allegiance.

**COMMENTS OF PUBLIC INTEREST**

Citizen Chuck Newsom stated concern regarding the requirements to have backflow prevention when utilizing creek water for landscape irrigation. City Manager Glasscock spoke to State regulations and advised that Staff will respond to Mr. Newsom and provide further information to the Council.

**CONSENT AGENDA**

Citizen Jack Lagos requested that Consent Agenda Item "I" be removed for individual consideration.

Upon a motion made by Council Member Harris and seconded by Deputy Mayor Pro Tem Smith, the Council voted 8-0 to approve and adopt all remaining items on the Consent Agenda as recommended and as follows:

**Approval of Minutes** (Consent Agenda Item "A")  
January 9, 2012

## **Approval of Expenditures**

### **Purchase from an Existing Contract**

To approve the purchase of fitness replacement equipment for the City of Plano Recreation Centers in the amount of \$217,760 from Fitco Fitness Center Outfitters through an existing contract with BuyBoard; authorizing the City Manager to execute all necessary documents. (BuyBoard Contract No. 336-10) (Consent Agenda Item “B”)

To approve the purchase of Bulk Fuel to be utilized by Fleet Services in an estimated amount of \$240,000 from Douglass Distributing Company through an existing contract/agreement and any subsequent renewals with Tarrant County, and authorizing the City Manager to execute all necessary documents. (Tarrant County Contract #2010-046) (Consent Agenda Item “C”)

### **Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)**

To approve a Professional Services Agreement by and between the City of Plano and Utility Service Partners Private Label, Inc., d/b/a Service Line Warranties of America, for a non-exclusive license to use the City’s name and logo to advertise a utility service line warranty program, and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “D”)

### **Approval of Contract Modification**

To approve a modification of Contract 2005-15-C with Redflex Traffic Systems, Inc. for the Red Light Camera Enforcement Program for the Police Department, to extend the length of the contract through April 30th, 2012 pursuant to the same terms and conditions, in an amount not to exceed the revenue. (Consent Agenda Item “E”)

### **Approval of Expenditure**

To approve the purchase of Air Conditioning Units Replacement at Schimelpfenig Library in the amount of \$137,200 from Trane through an existing contract and authorizing the City Manager to execute all necessary documents. (TXMAS Contract Number 8-03FAC020) (Consent Agenda Item “F”)

### **Adoption of Resolutions**

**Resolution No. 2012-1-4(R):** To approve the terms and conditions of an Interlocal Agreement by and between the City of Plano, Texas, the City of McKinney, Texas and City of Frisco, Texas for participation in the Homebuyer Education Classes to provide an educational program for individuals attempting to purchase homes in each municipal jurisdiction; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “G”)

**Resolution No. 2012-1-5(R):** To approve the terms and conditions of a service agreement for Maintenance Support Services by and between the City of Plano and Affiliated Telephone, Inc., the sole source provider for all hardware, software, and services pertaining to the Vesta-Meridian 9-1-1 system, in an amount not to exceed \$144,262; authorizing its execution by the City Manager and providing an effective date. (Consent Agenda Item “H”)

**Resolution No. 2012-1-6(R):** To adopt the First Amended Policy Statement for Tax Abatement of the City of Plano thereby establishing criteria for evaluating incentive applications; establishing procedural guidelines and criteria governing tax abatement agreements; and providing an effective date. (Consent Agenda Item “J”)

**Resolution No. 2012-1-7(R):** To approve the settlement of the lawsuit styled Billy Horton, Robert Morris, Robert Prunty, Alan Spurgin, David Ratcliff, and Sam Bigham, individually and on behalf of similarly situated individuals v. City of Plano, Civil Action No. 4:10-cv-372, United States District Court, Eastern District of Texas, Sherman Division in the amount of \$554,333.00; authorizing the City Manager to execute any and all documents necessary to settle such lawsuit; and providing an effective date. (Consent Agenda Item “K”)

### **Adoption of Ordinances**

**Ordinance No. 2012-1-8:** To transfer the sum of \$554,333 from the General Fund unappropriated fund balance to the General Fund operating appropriation for fiscal year 2011-12 for the purpose of providing funds for a settlement of a lawsuit between Billy Horton, Robert Morris, Robert Prunty, Alan Spurgin, David Ratcliff, and Sam Bigham, individually and on behalf of similarly situated individuals v. City of Plano, Civil Action No. 4:10- cv-372, United States District Court, Eastern District of Texas, Sherman Division; amending the Budget of the City and Ordinance No. 2011-9-8, declaring this action to be a case of public necessity; and providing an effective date. (Consent Agenda Item “L”)

### **END OF CONSENT**

**Resolution No. 2012-1-9(R):** To accept the findings and opinions of the Annual Audit; authorizing the City Manager, or in his absence the Director of Finance, to publish the results thereof; and providing an effective date. (Consent Agenda Item “I”)

Citizen Jack Lagos requested clarification regarding advisory fees paid and losses in the area of *Pension and Other Postemployment Benefits Trust Funds Net Assets*. Director of Finance Tacke advised that this fund is comprised of the Retirement Security Plan Pension Trust and the Postemployment Benefits 115 Trust and include monies which are withheld from employee checks or contributed on behalf of employees and held in trust. She advised that the figures represent the fair value of the investment as of year’s end and spoke to committee oversight of the funds, objectives and portfolio diversity with monies in both equities and bonds. Ms. Tacke responded to Mr. Lagos, clarifying that these funds are not subject to the Public Funds Investment Act, but are fiduciary in nature and held in trust.

Upon a motion made by Council Member Harris and seconded by Mayor Pro Tem Miner, the Council voted 8-0 to accept the findings and opinions of the Annual Audit and to adopt Resolution No. 2012-1-9(R).

**Public Hearing and adoption of Ordinance No. 2012-1-10** as requested in Zoning Case 2011-37 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to rezone 29.4± acres located at the northeast corner of Parker Road and Jupiter Road in the City of Plano, Collin County, Texas, from Agricultural to Patio Home; directing a change accordingly in the official zoning map of the City; and providing a publication clause, a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: Meaders-Hale, Ltd. (Regular Agenda Item “1”)

Planning Manager Firgens reviewed the surrounding land uses, advised that the request is in conformance with future land uses and the infill housing policy statement and that the Planning and Zoning Commission recommended approval as submitted.

Mayor Dyer opened the Public Hearing. Jim Douglas of Douglas Properties, representing the applicant, spoke to plans for the site and requested approval. No one spoke for or against the request, the Public Hearing was closed.

Upon a motion made by Mayor Pro Tem Miner and seconded by Council Member Gallagher, the Council voted 8-0 to rezone 29.4± acres located at the northeast corner of Parker Road and Jupiter Road in the City of Plano from Agricultural to Patio Home; as requested in Zoning Case 2011-37 and as recommended by the Planning and Zoning Commission and further to adopt Ordinance No. 2012-1-10.

Nothing further was discussed and Mayor Dyer adjourned the meeting at 7:29 p.m.

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**Phil Dyer, MAYOR**

ATTEST:

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Diane Zucco, City Secretary

**PLANO CITY COUNCIL  
SPECIAL CALLED WORKSESSION  
January 30, 2012**

**COUNCIL MEMBERS PRESENT**

Phil Dyer, Mayor  
Pat Miner, Mayor Pro Tem  
Lissa Smith, Deputy Mayor Pro Tem  
Ben Harris  
André Davidson  
James Duggan  
Patrick Gallagher  
Lee Dunlap

**STAFF PRESENT**

Bruce Glasscock, City Manager  
Frank Turner, Deputy City Manager  
LaShon Ross, Deputy City Manager  
Diane C. Wetherbee, City Attorney  
Diane Zucco, City Secretary

Mayor Dyer convened the Council into the Special Called Worksession on Monday, January 30, 2012, at 5:31 p.m., in the Building Inspections Training Room of the Plano Municipal Center, 1520 K Avenue. A quorum was present.

Discussion, Direction and Action Regarding Review of City of Plano Vision, Mission, Strategic Plan, Goals and Core Businesses, including Council Governance Roles and Responsibilities

Ron Holifield of Strategic Government Resources, facilitated the worksession, and spoke to the importance of rhythms of success, predicting and delegating, a strong culture and strategic thinking versus execution and planning. Council Member Dunlap spoke to legal restrictions in place for governmental entities. Mr. Holifield spoke to similarities in the responses received by the Plano Convention and Visitor's Bureau during its branding exercise when evaluating Plano's character/culture as compared to the input from Council and Staff. City Manager Glasscock spoke to similar comments from the school district. Mr. Holifield reviewed the major themes and trends received from the Council in their pre-retreat interviews.

After discussion, the Council stated a consensus to affirm the *Six Pillars for Plano's Vision* that form the foundation of Plano's strategic vision:

- A diverse international and emerging urban city and metropolitan center
- A multifaceted city which meets the needs of its citizens to work, live and play here
- A city known for very high quality city services
- A city of vibrant and renewing neighborhoods
- A city of business and enterprise of national and international importance
- A city that partners with a variety of educational institutions to support and encourage exceptional quality of education at all levels

The Council stated a consensus to affirm the *Twelve Reputational Drivers* critical in making the above strategic vision a reality:

- THE place to live
- A place that values and expects excellence
- High quality of life
- A progressive city
- Excellent schools
- Home to major corporations
- Broad variety of desirable housing
- Easy access to the entire region and to jobs
- Employment Center
- Family oriented
- A destination location
- Reestablished identity

The Council stated a consensus to affirm the *Eight Operational Drivers*:

- Exceptional quality city services
- A well maintained community that has a very attractive appearance
- A safe city
- Highly professional staff
- A high quality customer service orientation
- High quality and ample parks and green space
- Successfully transitioning into a mature city
- Innovative programs and solutions

The Council reviewed and stated a consensus to affirm the *Eight Strategic Goals*:

- Enhance Operational Analysis and Effectiveness
- Protect and Sustain the Quality of Governance
- Affirm and Reinforce Plano's Commitment to Being the Best
- Improve Communications
- Enhance Plano's Role as a Regional Leader
- Evaluate Options for Revitalizing Collin Creek Mall
- Evaluate Options for the future of Plano Centre and The Arts Center of North Texas
- Strengthen the Working Relationship with our Educational Partners

Mr. Holifield spoke to a planned Staff retreat, development of an execution plan and the dynamic nature of the process. Nothing further was discussed. Mayor Dyer adjourned the meeting at 6:34 p.m.

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**Phil Dyer, MAYOR**

ATTEST:

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Diane Zucco, City Secretary



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		02/13/2012		
Department:		Public Works Administration / David Falls		
Department Head		Gerald Cosgrove		
Agenda Coordinator (include phone #): <b>Kim McFarland (972-769-4109)</b>				
<b>CAPTION</b>				
<i>Award of Bid No. 2012-47-B, for the 2011-2012 Pavement Maintenance Phase I – Plano Parkway and Custer Road, Project No. 6170 to Laughley Bridge &amp; Construction, Inc. in the amount of \$870,258 and authorizing the City Manager or his authorized designee to execute all necessary documents.</i>				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: <b>2011-2012</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	729,589	2,615,411	1,000,000	<b>4,345,000</b>
Encumbered/Expended Amount	-729,589	-1,430	0	<b>-731,019</b>
This Item	0	-870,258	0	<b>-870,258</b>
BALANCE	0	1,743,723	1,000,000	<b>2,743,723</b>
<b>FUND(s):</b> CAPITAL RESERVE				
<b>COMMENTS:</b> Funds are included in the Capital Reserve Fund. This item, in the amount of \$870,258, will leave a current year balance of \$1,743,723 for the Pavement Management project.				
STRATEGIC PLAN GOAL: Pavement Management repairs relate to the City's Goal of Financially Strong City with Service Excellence.				
<b>SUMMARY OF ITEM</b>				
Staff recommends the bid for the 2011-12 Pavement Maintenance Phase I - Plano Parkway and Custer Road to Laughley Bridge & Construction, Inc., in the amount of \$870,257.50, for Alternate No. 1 (Cement with Nitrogen Oxides <1.7#Nitrogen Oxides/Ton of Clinker) which is within 5% of the base bid be accepted as the lowest responsible bid for the project conditioned upon timely execution of all necessary documents.				
This project involves the repair of 8,122 SY of concrete paving and 15,447 SF of concrete sidewalk along Plano Parkway between Commerce Drive and Custer Road. Also included is the repair of 5,012 SY of concrete paving and 11,161 SF of concrete sidewalk along Custer Road between Spring Creek Parkway and SH 121.				
The secondary vendor being recommended is Jerusalem Corporation in the amount of \$997,440.40.				
Engineer's estimate for this project is \$1,274,554.00.				
List of Supporting Documents: Bid Recap; Location Map			Other Departments, Boards, Commissions or Agencies	

# CITY OF PLANO

**Bid No. 2012-47-B**

**2011-12 Pavement Maintenance Phase I – Plano Parkway and Custer Road,  
Project 6170**

## **Bid Recap**

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**Bid opening Date/Time:** January 5, 2012 @ 3:00PM

**Number of Vendors Notified:** 905

**Vendors Submitting “No Bids”:** 0

**Number of Bids Submitted:** 8

<b>Vendor Name</b>	<b>Base Bid</b>	<b>Alternate No. 1</b>
Laughley Bridge & Construction	\$870,257.50	\$870,257.50
Jerusalem Corp.	\$997,440.40	\$997,440.40
Jim Bowman Construction Co. LP	\$1,021,901.45	\$1,021,901.45
Jet Underground Utilities Inc.	\$1,064,060.20	\$1,064,060.20
Axis Contracting & Co	\$1,115,245.00	\$1,115,245.00
McMahon Contracting	\$1,126,936.50	\$1,126,936.50
Estrada Concrete Company	\$1,142,997.25	\$1,142,997.25
Camino Construction	\$1,479,667.80	\$1,479,667.80

**Bids Evaluated Non-Responsive to Specification:** 0

**Recommended Vendor(s):**

Laughley Bridge & Construction

*Nancy Corwin*

January 5, 2012

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Nancy Corwin, Buyer II

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Date





**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		2/13/12		
Department:		Public Works		
Department Head:		Gerald P. Cosgrove		
Agenda Coordinator (include phone #):		Irene Pegues (7198)		Project No. 6060
<b>CAPTION</b>				
CSP No. 2012-44-B for the construction of Aquatic Center Renovation to J.C. Commercial, Inc., in the amount of \$4,260,777; and authorizing the City Manager or his authorized designee to execute all necessary documents.				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: <b>2011-2012</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	455,489	5,087,511	0	<b>5,543,000</b>
Encumbered/Expended Amount	-455,489	-422,408	0	<b>-877,897</b>
This Item	0	-4,260,777	0	<b>-4,260,777</b>
<b>BALANCE</b>	<b>0</b>	<b>404,326</b>	<b>0</b>	<b>404,326</b>
<b>FUND(S): RECREATION CENTER CIP, CAPITAL RESERVE CIP</b>				
<p><b>COMMENTS:</b> Funds are included in the FY 2011-12 Recreation Center and Capital Reserve CIP. This item, in the amount of \$4,260,777, will leave a current year balance of \$404,326 for the 09 Aquatic Center Renovation project.</p> <p><b>STRATEGIC PLAN GOAL:</b> The Aquatic Center Renovation project relates to the City's Goal of Great Neighborhoods - 1<sup>st</sup> Choice to Live.</p>				
<b>SUMMARY OF ITEM</b>				
Staff recommends the Competitive Sealed Proposal of J.C. Commercial, Inc., in the amount of \$4,260,777, be accepted as the best value conditioned on the timely execution of necessary contract documents for the construction of the Aquatic Center Renovation.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Location Map			N/A	
CSP Recap				
Recommendation memo dated January 24, 2012				



TO: Dianna Wike  
FROM: Jim Razinha, Facilities Manager  
DATE: 24 January 2012  
SUBJECT: **AQUATIC CENTER RENOVATION, Project No. 6060  
CSP Number 2012-44-B**

The Technical Evaluation Team for the subject project evaluated proposals from six firms that were within budget, and did not evaluate three proposals that were above the project budget.

Award recommendation is based on the following evaluation criteria:

Price: 60%  
Technical: 40%

The technical evaluation consisted of the following criteria and weights:

Past performance on similar projects	30%
Project team experience	25%
Quality Control and Warranty Program	20%
Time to construct	25%

3i Construction proposed the lowest cost of construction. After applying the weight factors to the technical and price scores, 3i Construction ranked fifth of the six proposers evaluated. The Technical Evaluation Team scored 3i Construction as well below meeting the needs identified in the solicitation, as the 3i Construction proposal did not demonstrate experience in constructing similar projects and that its proposed project team had little experience in similar projects. The evaluating team determined the quality control and warranty programs submitted met the needs.

Hasan Construction Services proposed the second lowest cost of construction. After applying the weight factors to the technical and price scores of, Hasan Construction Services ranked third of the six proposers evaluated. The Technical Evaluation Team scored Hasan Construction Services as below meeting the needs identified in the solicitation, as the Hasan Construction Services proposal did not demonstrate sufficient performance and experience in similar projects and that its proposed project team had insufficient experience in similar projects. The evaluating team determined the quality control and warranty programs submitted did not meet the needs identified.

J. C. Commercial, Inc. proposed the third lowest cost of construction. After applying the weight factors to J. C. Commercial's scores and price proposal, J. C. Commercial ranked first of the six proposers evaluated. The Technical Evaluation Team found that J. C. Commercial's proposal demonstrated past performance on similar projects and project team experience that exceeded the needs identified in the solicitation. Further, J. C. Commercial demonstrated experience working pool replacements in existing natatoriums, and outlined a comprehensive quality control and warranty program that also exceeded the needs identified.

J. C. Commercial's proposed time of construction of 250 days is acceptable to the City of Plano.

Per the weighted scoring of the proposals received and evaluated for the subject construction contract summarized above, I recommend award to J. C. Commercial, Inc. in the amount of \$4,260,777 (for the base proposal only of construction using concrete containing Portland cement manufactured through a process that meets or is below the TCEQ source cap emissions standards) and 250 days from Notice to Proceed as being the best value to the City of Plano.

# CITY OF PLANO

## CSP NO. 2012-44-B CSP FOR AQUATIC CENTER RENOVATION – PROJECT NO. 6060

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**CSP opening Date/Time:** December 15, 2011 at 3:00 PM

**Number of Vendors Notified:** 1740

**Vendors Submitting “No Bids”:** 0

**Number of Proposals Submitted:** 9

3i CONSTRUCTION, LLC	\$4,199,000
HASEN CONSTRUCTION SERVICES	\$4,250,000
J. C. COMMERCIAL, INC.	\$4,260,777
RATCLIFF CONSTRUCTORS LP	\$4,283,000
THE GILBERT CONSTRUCTION GROUP, INC.	\$4,400,000
BIG SKY CONSTRUCTION CO., INC.	\$4,410,000
HILL & WILKINSON CONSTRUCTION GROUP, LTD.	\$4,797,000
CONSTRUCTION ZONE OF TEXAS, LLC	\$4,870,000
LEE LEWIS CONSTRUCTION, INC.	\$4,963,000

**Proposals Received – Not Considered: 3**

The following Proposals were over budget:

HILL & WILKINSON CONSTRUCTION GROUP, LTD.	\$4,797,000
CONSTRUCTION ZONE OF TEXAS, LLC	\$4,870,000
LEE LEWIS CONSTRUCTION, INC.	\$4,963,000

**Recommended Vendor(s):**

J. C. COMMERCIAL, INC.	\$4,260,777
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*Dianna Wike*

January 06, 2012

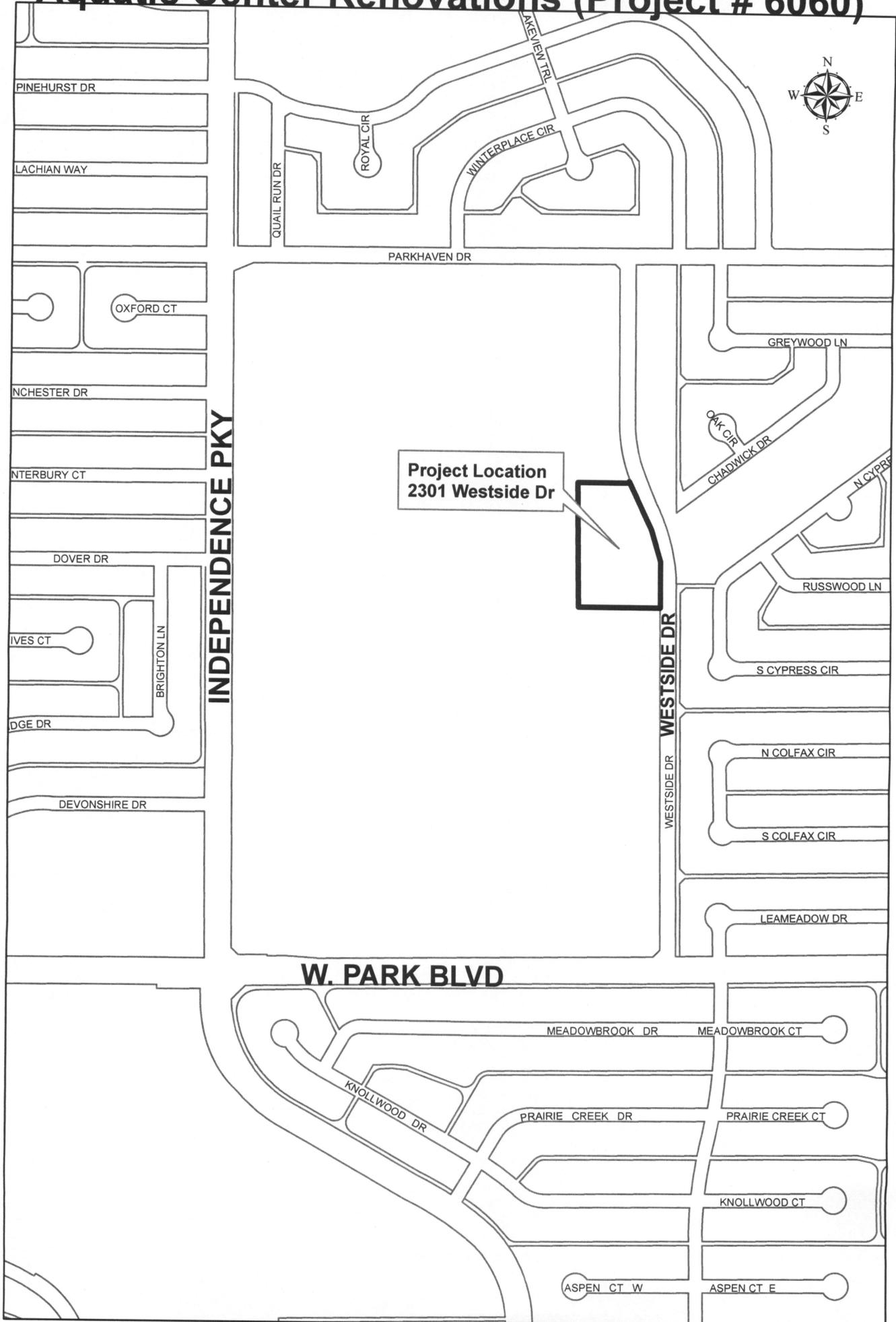
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Dianna Wike, Buyer Supervisor

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Date

# Aquatic Center Renovations (Project # 6060)



Project Location  
2301 Westside Dr

Location Map



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular <input type="checkbox"/> Statutory
Council Meeting Date:	2/13/2012
Department:	Parks & Recreation
Department Head	Matthew Simmons
Agenda Coordinator (include phone #): <b>Nicole Griffin ext 7204</b>	

**CAPTION**

Bid No. 2012-40-C for a 1 year contract with 3 City optional renewals for Irrigation Repair Parts for the Parks department to Irrigator's Supply Inc, Longhorn Inc and Professional Turf Products LP in the estimated annual amount of \$65,000 and authorizing the City Manager or his designee to execute all necessary documents.

**FINANCIAL SUMMARY**

NOT APPLICABLE       OPERATING EXPENSE       REVENUE       CIP

FISCAL YEAR:      2011-12,2012-13,2013-14,2014-15	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	78,187	195,000	<b>273,187</b>
Encumbered/Expended Amount	0	-13,187	0	<b>-13,187</b>
This Item	0	-65,000	-195,000	<b>-260,000</b>
BALANCE	0	0	0	<b>0</b>

**FUND(s):**    General Fund

**COMMENTS:**    This item approves price quotes. Expenditures will be made in the Parks and Recreation Department based on need within the approved budget appropriations for each year of the contract. The estimated annual amount to be spent in FY 2011-12 is \$65,000. The estimated future amount is \$195,000, which will be made within approved budget appropriations. Any additional expenditures for parts or supplies in Park Field Services during FY 2011-12 will need to be offset by identified savings or council authorization.

**STRATEGIC PLAN GOAL:** Continued repair and replacement of irrigation installations across the city relates to the City's goal of Great Neighborhoods - 1st Choice to Live and Financially Strong City with Service Excellence.

**SUMMARY OF ITEM**

The Parks and Recreation staff recommends the bid of Irrigator's Supply Inc (Line Items 1,2,4,6,7,8,9,10,13,14 and 18 in the amount of \$13,614), Longhorn Inc (Line Items 3,5,11,12 and 17 in the amount of \$12,379) and Professional Turf Products LP (Line Items 15 and 16 in the amount of \$5,740), this annual contract, one (1) year with three (3) City optional renewals, is for the Irrigation Repair Parts, as the lowest responsive, responsible bidders in the amount of \$31,733. The annual award will not be based upon the total bid price of \$31,733. The estimated annual amount for this contract is \$65,000, which is the bid price plus the established multiple percentage discount agreement that was submitted with the bid. This contract will be used to supply specialized non-controller related parts for the maintenance of over 500 irrigation systems, for over 1,200 acres of irrigated turf. This includes all parks, athletic complexes, special event areas, public buildings, along with irrigation to over 7,000 median trees. The amount budgeted for this contract is \$65,000.

List of Supporting Documents: \_\_\_\_\_ Other Departments, Boards, Commissions or Agencies \_\_\_\_\_



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

Bid Recap  
Memorandum

# MEMO

Date: 2/1/2012  
To: Purchasing Department, Nicole Griffin  
From: Matthew Simmons, Parks Field Services Supervisor  
Re: **Award Recommendation 2012-40-C Irrigation Repair Parts**

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It is the recommendation of Parks and Recreation to award **Bid #2012-40-C Irrigation Repair Parts** as follows:

- **Irrigator's Supply Inc** was the lowest responsive, responsible bidder on line items: 1, 2, 4, 7, 8, 9, 10, 13, 14, and 18. In addition, line item 6 had two bidders close in price. The total difference between the two bids was \$111.55 (between Irrigators Supply Inc and Ewing Irrigation). Since Ewing Irrigation has no other line items for award, it is also recommended that line item 6 be awarded to Irrigator's Supply Inc. The total estimated amount of all bid items recommended for award to Irrigator's Supply Inc is **\$13,613.99**
- **Longhorn Inc** was the lowest responsive, responsible bidder on line items 3, 5, 11, 12, and 17. The total estimated amount for bid items recommended for Longhorn Inc. is **\$12,378.52**.
- **Professional Turf Products LP** was the lowest responsive bidder on lines 15 and 16. The total estimated amount of bid items recommended for award to Professional Turf Products LP is **\$5,740.00**.

*The estimated annual expenditures for the above line item portion of this bid: \$31,732.51.*

Furthermore, as part of this bid, the department would also like to recommend the establishment of multiple percentage discount agreements with ALL participating responsive, responsible bidders. These agreements will be used to purchase other necessary items not listed as individual line items that are required to maintain department irrigation systems. Doing so will be more practical than relying on a single supplier to always maintain necessary inventories to meet the needs of the department. This recommendation is in addition to the above mentioned total line item pricing award amount.

*The estimated annual expenditures for the discount portion of this bid total: \$33,267.49.*

The TOTAL amount of estimated annual expenditures related to this contract (line items and discounts) equals **\$65,000.00**. Please review and begin the necessary steps for the award of this contract.

## Justification:

- **Contract Purpose** - This contract will be used to supply specialized non-controller related parts for the maintenance of over 500 irrigation systems, for over 1,200 acres of irrigated turf. This includes all parks, athletic complexes, special event areas, public buildings, along with irrigation to over 7,000 median trees.
- **Non-Approval Implication** - This annual contract is necessary for the support of park irrigation systems. Proper maintenance of irrigation systems is critical to maintaining citywide park assets. Lack of parts for service would result in poorly maintained or non-functioning irrigation systems leading to the loss of plant materials along with damage to adjacent landscapes and structures.

CITY OF PLANO

BID NO. 2012-40-C  
Irrigation Repair Parts

BID RECAP

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**Bid opening Date/Time:** January 4, 2012 @ 2:00 pm

**Number of Vendors Notified:** 582

**Vendors Submitting "No Bids":** 0

**Number of Bids Submitted Responsive to Bid:** 4

Ewing Irrigation

Irrigators Supply Inc

Longhorn Inc

Professional Turf Products LP

**Bids Evaluated Non-Responsive to Specifications:** 1

**Recommended Vendors:**

Irrigators Supply Inc	Item 1, 2, 4, 6, 7, 8, 9, 10, 13, 14, 18	\$13,613.99
Longhorn Inc	Item 3, 5, 11, 12, 17	\$12,378.52
Professional Turf Products LP	Item 15, 16	\$ 5,740.00

*Nicole Griffin*

*January 27, 2012*

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Nicole Griffin  
Buyer I

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Date



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		2-13-2012			
Department:		Purchasing			
Department Head		Diane Palmer-Boeck			
Agenda Coordinator (include phone #): <b>Nancy Corwin 972-941-7137</b>					
<b>CAPTION</b>					
Award of Bid No. 2012-32-C for a one (1) year contract with three (3) City optional renewals to purchase Reinforcing Steel from BARNSCO Inc. and CMC Construction Services Inc. in an estimated amount of \$63,850 to be utilized by Public Works, and authorizing the City Manager or his authorized designee to execute all necessary documents.					
<b>FINANCIAL SUMMARY</b>					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2011-12, 2012-13, 2013-14, 2014-15, 2015-16 (partial fiscal year)	Prior Year (CIP Only)	Current Year	Future Years	<b>TOTALS</b>
Budget		0	68,000	191,549	<b>259,549</b>
Encumbered/Expended Amount		0	-25,774	0	<b>-25,774</b>
This Item		0	-42,226	-191,549	<b>-233,775</b>
BALANCE		0	0	0	<b>0</b>
<b>FUND(S):</b> GENERAL FUND, WATER & SEWER FUND, MUNICIPAL DRAINAGE FUND					
<p><b>COMMENTS</b> This item approves price quotes. Expenditures will be made from various cost centers within the approved budget appropriations for each year of the contract. The estimated annual amount to be spent in FY 2011-12 is \$68,000. The estimated future annual amount is \$63,850, and will be based on need within budget appropriations.</p> <p><b>STRATEGIC PLAN GOAL:</b> Contracting a purchase price for Reinforcing Steel relates to the City's goal of a Financially Strong City with Service Excellence.</p>					
<b>SUMMARY OF ITEM</b>					
<p><b>Staff recommends approval of a one (1) year contract with three (3) city optional renewals to purchase Reinforced Steel for Public Works from BARNSCO Inc. in the estimated amount of \$35,285 (Items: 1, 5) and from CMC Construction Services Inc. in the estimated amount of \$28,564.58 (Items: 2, 3, 4) in a total estimated amount of \$63,850 for bid 2012-32-C and conditioned upon timely execution of any necessary contract documents.</b></p>					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Recommendation Memo, Bid Recap					



Date: January 11, 2012  
To: Diane Palmer-Boeck, Purchasing Manager  
From: Billy Clay, Public Works Superintendent / Streets and Drainage  
Subject: Recommendation for Reinforcing Steel \ 2012-32-C

Based on the bids received to get the best price for the City of Plano a split award by line item is recommended. Recommend award to split the bid awarding; Item one (1) to BARNSCO Inc. @ \$3.31 per each, total bid of \$33,500.00, Item two (2) CMC Construction Services Inc. @ \$1.1473 per each, total bid of \$22,946.00, Item three (3) to CMC Construction Services Inc. @ \$.5511 per each, total bid of \$1,653.30, item four (4) to CMC Construction Services Inc. @ \$1.6522 per each, total bid of \$3,965.28, Item five (5) to BARNSCO Inc. @ \$5.95 per each, total bid of \$1,785.00. The total estimated award if awarded by line item \$63,849.58, award to CMC Construction Services Inc. \$28,564.58, BARNSCO Inc. \$35,285.00. CMC Construction Services Inc. bid the low price for item one (1) and five (5) but stipulated a price escalator that would increase the price greater than the second low bid by the third quarter of the first year of the contract and is therefore considered non-responsive on these items. If this bid is not awarded, the City would purchase steel at the current market price and may receive higher non-contract pricing with no set response time thus putting the City's streets and drainage updates and repairs in jeopardy.

# CITY OF PLANO

**Bid No. 2012-32-C**

Reinforcing Steel

## Bid Recap

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**Bid opening Date/Time:** December 20, 2011 @ 3:00PM

**Number of Vendors Notified:** 968

**Vendors Submitting "No Bids":** 1

**Number of Bids Submitted:** 2

**Vendor Name**

CMC Construction Services Inc.

BARNSCO Inc.

**Bids Evaluated Non-Responsive to Specification:**

CMC Construction Services Inc. was deemed non-responsive for items 1 and 5

**Recommended Vendor(s):**

CMC Construction Services Inc. Items 2, 3, 4 \$28,564.58

BARNSCO Inc. Items 1, 5 \$35,285.00

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**Total estimated award \$63,849.58**

*Nancy Corwin*

December 20, 2011

\_\_\_\_\_  
Nancy Corwin, Buyer II

\_\_\_\_\_  
Date



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		02/13/12		
Department:		Technology Services		
Department Head		David Stephens		
Agenda Coordinator (include phone #): <b>Amy Powell X7342</b>				
<b>CAPTION</b>				
To approve a contract for the purchase of maintenance and support for Ironport Software, in the amount of \$68,624 from Solid Border, Inc., through a Department of Information Resources (DIR) Contract, and authorizing the City Manager to execute all necessary documents. (DIR-SDD-1123)				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: <b>2011-12</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	2,866,574	0	<b>2,866,574</b>
Encumbered/Expended Amount	0	-1,446,063	0	<b>1,446,063</b>
This Item	0	-68,624	0	<b>-68,624</b>
BALANCE	0	<b>1,351,887</b>	0	<b>1,351,887</b>
<b>FUND(S):     TECHNOLOGY SERVICES FUND</b>				
<b>COMMENTS:</b> Funds are included in the 2011-12 Technology Services budget for this maintenance agreement. The remaining balance will be used throughout the year for other maintenance agreements.				
<b>STRATEGIC PLAN GOAL:</b> Maintenance agreements relate to the City's Goal of financially Strong City with Service Excellence.				
<b>SUMMARY OF ITEM</b>				
Technology Services recommends Council approve a contract, in the amount of \$68,624 to Solid Border, Inc., through the Department of Information Resources (DIR) Contract for maintenance and support for Ironport Software. Ironport Software is used to filter our current incoming email and to filter traffic to the internet. This maintenance is for a one-year term and provides the City with critical security for our internet access. The City is authorized to purchase from the state contract list pursuant to Section 271, Subchapter D of the Local Government Code, and by doing so, satisfies any State Law requiring the local government to seek competitive bids for items. (DIR-SDD-1123)				
List of Supporting Documents: Contract and Staff Memo			Other Departments, Boards, Commissions or Agencies	

# Interoffice Memo

**Date:** 01/25/12  
**To:** David Stephens, Director Technology Services  
**Cc:**  
**From:** Chester M. Helt, Infrastructure Manager  
**RE:** Annual Maintenance for Ironport Maintenance

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We must purchase our maintenance for our IronPort software which we use to filter our current incoming email and to filter traffic to the internet. We obtained quotes from Solid Border Inc., a DIR vendor, INX, a DIR vendor and World Wide Technologies, Inc. a DIR vendor. We recommend purchasing this maintenance from Solid Border, using their State of Texas contract number DIR-SDD-1123 for a not to exceed price of \$ 68,624.00.

IronPort is a critical layer of security for our Internet access. We are renewing our email filtering for one year to give us an extension of this protection while migrating our email to Microsoft's cloud solution. The Internet filtering, anti-malware and all required Ironport software maintenance are for a one year term.

**CONTRACT BY AND BETWEEN  
CITY OF PLANO AND SOLID BORDER, INC.  
FOR IRONPORT SOFTWARE MAINTENANCE SUPPORT**

**THIS CONTRACT** is made and entered into by and between **SOLID BORDER, INC.**, a Texas corporation, whose address is 1806 Turnmill, San Antonio, Texas 78248, hereinafter referred to as "Contractor," and the **CITY OF PLANO, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Plano City Council and subsequent execution of this Contract by the Plano City Manager or his duly authorized designee.

For and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

**I.  
SCOPE OF SERVICES**

Contractor shall provide maintenance support for Ironport Software. These services shall be provided in accordance with this Contract and with the Department of Information Resources Contract No. DIR-SDD-1123, a copy of which is incorporated herein by reference in its entirety as if it were recited here verbatim and which is on file and available for inspection in the City of Plano Technology Services Department. This Contract consists of:

- (a) This Contract;
- (b) The Department of Information Resources Contract No. DIR-SDD-1123 on file with the City of Plano Technology Services Department;
- (c) Solid Border's Statement of Work (**Exhibit "A"**);
- (d) Insurance Requirements (**Exhibit "B"**);
- (e) Affidavit of No Prohibited Interest (**Exhibit "C"**).

In the event there is a conflict in interpretation or terms, the documents shall control in the order listed above. These documents shall be referred to collectively as "Contract Documents."

**II.  
PAYMENT**

Payments hereunder shall be made to Contractor following City's acceptance of the work and within thirty (30) days of receiving Contractor's invoice for the products and services delivered. Total compensation under this Contract shall not exceed the sum of **SIXTY EIGHT THOUSAND SIX HUNDRED TWENTY FOUR AND NO/100 DOLLARS (\$68,624.00)**.

**III.  
TERM**

The term of this Contract shall be a period of twelve (12) months commencing upon the effective date hereof.

**IV.  
DESCRIPTION OF SERVICES**

Contractor will provide the services described in the Contract Documents and **Exhibit "A"** attached hereto. At City's request, Contractor may also provide additional services under this Contract at Contractor's then-applicable rates for such services or goods under the Department of Information Resources Contract No. DIR-SDD-1123 or any additional contract addendums as executed by the Plano City Manager or his duly authorized designee.

**V.  
CITY CONTACT**

If requested by Contractor, City will provide Contractor with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable City's personnel to maintain contact, as needed, with Contractor.

**VI.  
PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC**

Contractor shall at all times exercise reasonable precautions for the safety of employees and others on or near the work and shall comply with all applicable provisions of Federal, State, and Municipal safety laws.

**VII.  
TIME AND PLACE OF SERVICE**

Service will be provided at the location specified in the Contract Documents. Unless otherwise stated in this Contract, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays.

**VIII.  
COMPLIANCE WITH APPLICABLE LAWS**

Contractor shall at all times observe and comply with all directly applicable Federal, State and local laws, ordinances and regulations including all amendments and revisions thereto, which affect the work. If Contractor observes that the work is at variance therewith, Contractor shall promptly notify City in writing.

**IX.  
INDEMNIFICATION AND HOLD HARMLESS**

**THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS (INCLUDING PATENT, COPYRIGHT AND TRADEMARK INFRINGEMENT) OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT**

**MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**

**CONTRACTOR AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CONTRACTOR'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONTRACTOR'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONTRACTOR SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.**

**IN ADDITION TO CONTRACTOR'S INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION AND DEFENSE REQUIREMENTS HEREIN, IF AN INFRINGEMENT CLAIM OCCURS, OR IN CONTRACTOR 'S OPINION IS LIKELY TO OCCUR, CONTRACTOR SHALL, AT ITS EXPENSE: (A) PROCURE FOR THE CITY THE RIGHT TO CONTINUE USING THE PRODUCT; (B) REPLACE OR MODIFY THE PRODUCT SO THAT IT BECOMES NON-INFRINGEMENT WHILE PROVIDING FUNCTIONALLY EQUIVALENT PERFORMANCE; OR (C) ACCEPT THE RETURN OF THE PRODUCT AND GRANT THE CITY A REIMBURSEMENT FOR THE PRODUCT. CONTRACTOR WILL PROCEED UNDER SUBSECTION (C) ABOVE ONLY IF SUBSECTIONS (A) AND (B) PROVE TO BE COMMERCIALY UNREASONABLE.**

**THE INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION HEREIN APPLIES TO ALL PRODUCTS PROVIDED, SUPPLIED OR SOLD UNDER THIS AGREEMENT BY CONTRACTOR TO CITY WHETHER MANUFACTURED BY CONTRACTOR OR A THIRD PARTY. CONTRACTOR REPRESENTS THAT, TO THE BEST OF ITS KNOWLEDGE, THE CITY'S USE OF PRODUCTS THAT ARE PROVIDED SUPPLIED, OR SOLD BY CONTRACTOR TO CITY AS PART OF THIS AGREEMENT DOES NOT CONSTITUTE AN INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS AND THE CITY HAS THE LEGAL RIGHT TO**

**USE SAID PRODUCTS. THE CITY ENTERS INTO THIS AGREEMENT RELYING ON THIS REPRESENTATION.**

**THE INDEMNIFICATION HEREIN SURVIVES THE TERMINATION OF THE CONTRACT AND/OR DISSOLUTION OF THIS AGREEMENT INCLUDING ANY INFRINGEMENT CURE PROVIDED BY THE CONTRACTOR PURSUANT TO PARAGRAPH 3 IN THE HEREIN INDEMNIFICATION SECTION.**

**X.  
VENUE**

The laws of the State of Texas shall govern the interpretation, validity, performance, and enforcement of this Contract. The parties agree that this Contract is performable in Collin County, Texas, and that exclusive venue shall lie in Collin County, Texas.

**XI.  
ASSIGNMENT AND SUBLETTING**

Contractor agrees to retain control and to give full attention to the fulfillment of this Contract and that this Contract shall not be assigned without the prior written consent of City, except for assignments to a Contractor affiliate. An assignment of this Contract with the consent of the City or to an affiliate of Contractor is conditioned on the assignee agreeing to be bound by the terms of this Contract. Contractor may subcontract any portion of its performance under this Contract. Contractor further agrees that the subletting of any portion or feature of the work, or materials required in the performance of this Contract, shall not relieve Contractor from its full obligations to City as provided by this Contract. In the event any additional or different subcontractors are required or requested by City, or in the event City rejects the use of a particular subcontractor, such rejection must be submitted in writing and be based on just and reasonable cause. Any resultant change in contract price and/or schedule shall be mutually agreed upon.

**XII.  
INDEPENDENT CONTRACTOR**

Contractor covenants and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Contractor.

**XIII.  
INSURANCE AND CERTIFICATES OF INSURANCE**

Contractor shall procure and maintain for the duration of the contract insurance coverage as set forth in the Insurance Requirements marked **Exhibit "B"** attached hereto and incorporated herein by reference. Contractor shall provide a signed

insurance certificate verifying that they have obtained the required insurance coverage prior to the effective date of this Contract.

**XIV.  
FORCE MAJEURE**

Neither party is liable for delays or lack of performance resulting from any causes beyond the reasonable control of a party including acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Company's operations in the City.

**XV.  
AFFIDAVIT OF NO PROHIBITED INTEREST**

Contractor acknowledges and represents Contractor is aware of all applicable laws, City Charter, and City Code of Conduct regarding prohibited interests and that the existence of a prohibited interest at any time will render the Contract voidable. Contractor has executed the Affidavit of No Prohibited Interest, attached and incorporated herein as **Exhibit "C"**.

**XVI.  
TERMINATION FOR CAUSE**

If either party defaults in the performance of this Contract, the other party will give to the non-performing party a written and detailed notice of the default. If City is the defaulting party, it will have thirty (30) days to provide a written plan to cure the default that is acceptable to Contractor and begin implementing the cure plan immediately after plan approval. If the non-performing party fails to provide or implement a cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Contract effective upon giving a written notice of termination to the defaulting party.

Any termination of this Contract will not relieve either party of obligations previously incurred pursuant to this Contract, including payments which may be due and owing at the time of termination. All sums owed and not in dispute by City will become due and payable immediately upon termination of this Contract. Upon the effective date of termination, Contractor will have no further obligation to provide Services.

**XVII.  
TERMINATION FOR CONVENIENCE**

City may, at its option, with or without cause, and without penalty or prejudice to any other remedy it may be entitled to at law, or in equity or otherwise under this Contract, terminate further work under this Contract, in whole or in part by giving at least sixty (60) days prior written notice thereof to Contractor with the understanding that all services being terminated shall cease upon the expiration of the 60-day period.

If Contractor provides Services after the termination or expiration of this Contract, the terms and conditions in effect at the time of the termination or expiration will apply to those Services.

**XVIII.  
SEVERABILITY**

The provisions of this Contract are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Contract is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of the Contract. However, upon the occurrence of such event, either party may terminate this Contract by giving the other party thirty (30) days written notice.

**XIX.  
MAILING OF NOTICES**

Unless instructed otherwise in writing, Contractor agrees that all notices or communications to City permitted or required under this Contract shall be addressed to City at the following address:

City of Plano  
Technology Services  
P.O. Box 860358  
Plano, Texas 75086-0358  
Attn: David Stephens

City agrees that all notices or communications to Contractor permitted or required under this Contract shall be addressed to Contractor at the following address:

Solid Border  
1806 Turnmill  
San Antonio, Texas 78248  
Attn: Brad Miller

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

**XX.  
ENTIRE AGREEMENT**

This Contract and its attachments embody the entire agreement between the parties and may only be modified in writing if executed by both parties.

City agrees to reference this Contract and the Department of Information Resources Contract No. DIR-SDD-1123 on any purchase order issued in furtherance of this Contract, however, an omission of the reference to this Contract shall not affect its applicability. In no event shall either party be bound by any terms contained in a City purchase order, acknowledgement, or other writings unless: (i) such purchase order, acknowledgement, or other writings specifically refer to this Contract; (ii) clearly indicate

the intention of both parties to override and modify this Contract; and (iii) such purchase order, acknowledgement, or other writings are signed by authorized representatives of both parties.

**XXI.  
AUTHORITY TO SIGN**

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

**XXII.  
SUCCESSORS AND ASSIGNS**

This Contract shall be binding upon the parties hereto, their successors, heirs, personal representatives and assigns.

**XXIII.  
HEADINGS**

The headings of this Contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

**XXIV.  
EFFECTIVE DATE**

This Contract shall be effective from and after execution by both parties hereto.

**IN WITNESS WHEREOF**, the parties have executed this Contract by signing below.

**SOLID BORDER, INC.**

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY OF PLANO, TEXAS**

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Bruce D. Glasscock  
CITY MANAGER

APPROVED AS TO FORM

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

**ACKNOWLEDGMENTS**

**STATE OF TEXAS**           §  
  §  
**COUNTY OF \_\_\_\_\_**   §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2012 by \_\_\_\_\_, (*Authorized representative*) \_\_\_\_\_ (*Title*) of **SOLID BORDER, INC.**, a Texas corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

**STATE OF TEXAS**           §  
  §  
**COUNTY OF COLLIN**       §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2012 by **BRUCE D. GLASSCOCK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas



david@solidborder.com | Direct: 210.402.0475 | Toll-Free: 800.213.8175 x85

Main Toll-Free: 800.213.8175 | Fax: 800.887.9974

Protect Your Network

Texas DIR Listed | HUB | WBENC/WBEA | SCTRCA/TUCP | Woman-owned/Small/Disadvantaged Business Enterprise

Quote for: City of Plano  
 Debbi Atkins  
 1117 East 15th Street  
 Plano, TX 75074  
 (972) 941-7753  
 datkins@plano.gov

Prepared by: David Williams

Remit to: Solid Border, Inc.  
 1806 Turnmill  
 San Antonio, TX 78248

Federal ID: 331009121



Quote: 40889 - RS  
 Date: 12/12/2011

SKU	Description	Qty	List Price	Per Unit	Extended
<b>Web and Email Security Appliance- IronPort Renewal</b> 1 year option: 12/28/2011- 12/27/2012					
WBUN-2A-GV-DBE-1Y-REN	Cisco IronPort Web Security Dual Appliance GOV Bundle Renewal - 1 Year- Web Usage Controls, Web Reputation Filtering, Sophos & Webroot Anti-Malware, Platinum Support S/Ns: 5JHJFP1 & H8JYZD1	2700	\$26.70	\$15.75	\$42,525.00
EBUN-2A-GV-SQR-1Y-REN	Cisco IronPort Email Security Dual Appliance GOV Bundle Renewal - 1 Year- Anti Spam, Anti Virus, Virus Outbreak Filters, Centralized Mgmt, Platinum Support S/Ns FYHW5D1 & DZ4X5D1	2300	\$16.80	\$9.91	\$22,793.00
SP-M670-P-1Y	Platinum Support for Cisco IronPort M670, 1 Year SN: 5JHJFP1	1	\$3,590.00	\$2,118.00	\$2,118.00
MBUN-WBMGT-GV-1Y-REN	Centralized Web Reporting, Policy and Configuration Management 1 Year License Key	2700	\$0.75	\$0.44	\$1,188.00
<b>Total</b>					<b>\$68,624.00</b>

**DIR** State Contract: DIR-SDD-1123

Please include this number on all Purchase Orders if purchasing via the DIR.

Shipping charges are included in price, unless otherwise noted.

Payment terms are net 30 days.

This quote expires after 30 days.

## INSURANCE REQUIREMENTS

### 1.0 General Provisions

- 1.1 The Contractor shall obtain and maintain the minimum insurance coverage set forth in this section. By requiring such minimum insurance, City shall not be deemed or construed to have assessed the risk that may or may not be applicable to the Contractor. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Contractor is not relieved of any liability or other obligation assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The insurance requirements listed below do not replace any warranty or surety (performance, payment, or maintenance) bonds if required by preceding or subsequent sections of this contract.
- 1.2 Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified herein or cover such subcontractors under its insurance coverage.
- 1.3 The Contractor agrees that the insurance requirements specified in this section do not reduce the liability Contractor has assumed in any indemnification/hold harmless section of this contract.
- 1.4 City reserves the right to approve the security of the insurance coverage provided pursuant to this section by insurers including terms, conditions and the Certificate of Insurance. Failure of the Contractor to fully comply with requirements of this section during the term of the contract will be considered a material breach of contract and will be cause for immediate termination of the contract at the option of City.
- 1.5 Insurance coverage required by this section shall:
  - 1.5.1 Be on a primary basis, non-contributory with any other insurance coverage and/or self-insurance carried by City
  - 1.5.2 Be with an insurer possessing an A-VII. A. M. Best Rating
- 1.6 **Subcontractor Insurance.** If the contractor utilizes the services of another company or subcontractor, affiliate or non-affiliate, in order to fulfill the requirements covered under this Agreement, then those other companies or subcontractors must comply with the insurance provisions within this Agreement.

2.0 Minimum Insurance Coverage & Limits

**2.1 Commercial General Liability.** Contractor shall maintain commercial general liability and, if necessary commercial umbrella insurance as specified below.

2.1.1 Commercial general liability insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage).

2.1.2 City, the City Council and its members, the City's agents, officers, directors and employees shall be included as an additional insured under the commercial general liability using **ISO additional insured endorsement CG 20 10** or the equivalent.

2.1.3 Limits of Insurance

2.1.3.1 \$1,000,000 Per Occurrence

3.0 Evidence of Insurance

3.1 Prior to commencement of work, and thereafter upon renewal or replacement of coverage required by this section, Contractor shall furnish City a certificate(s) of insurance, including for subcontractors cited in Section 1.6, executed by a duly authorized representative of each insurer, showing compliance with this section. **Contractor shall furnish copies of all endorsement to insurance policies as required by each section herein to the City.**

3.2 Failure of City to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

3.3 City shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City.

3.4 Failure to maintain required insurance may result in termination of this contract at sole option of the City.

3.5 The Contractor shall furnish a Certificate of Insurance (COI) evidencing insurance coverage required by this section ten (10) business days preceding commencement of contracted service(s). The COI shall:

3.5.1 List each insurers' NAIC Number or FEIN

- 3.5.2 List **contract number**, **project name**/number, name of event, location (building name, building address, etc.), date(s) of event or service being performed
- 3.5.3 State insurance is on a primary basis and non-contributory with any insurance/or self-insurance carried by City
- 3.5.4 Specifically list reference to all endorsements required herein
- 3.5.5 List the specific number of days cancellation provided pursuant to policy language for notice of cancellation on certificate
- 3.5.6 List City of Plano, Risk Management Division, 7501 A Independence Parkway, Plano, Texas, 75025 in the Certificate Holder Section

# ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID TR  
SOLID-1

DATE (MM/DD/YYYY)  
01/10/12

PRODUCER  
Affinity Insurance Services  
TechShield  
PO Box 19220A  
Newark NJ 07195-0220  
Phone: 866-815-5780 Fax: 866-815-5781

INSURED  
  
Solid Border, Inc.  
1806 Turnmill  
San Antonio TX 78248

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE		NAIC #
INSURER A:	Hartford Accident & Indem. Co.	
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	X	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	39SBAVG8890	07/26/11	07/26/12	EACH OCCURRENCE \$ 1,000,000. DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000. MED EXP (Any one person) \$ 10,000. PERSONAL & ADV INJURY \$ 1,000,000. GENERAL AGGREGATE \$ 2,000,000. PRODUCTS - COMP/OP AGG \$ 2,000,000.
A		<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	39SBAVG8890 39SBAVG8890	07/26/11 07/26/11	07/26/12 07/26/12	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
		<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
A		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	39WBCZL3276	09/21/11	09/21/12	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

The City of Plano, the City Council, its member, agents, officers, directors and employee are included as an Additional Insured

### CERTIFICATE HOLDER

City of Plano  
Risk Management Division  
7501 A Independence Pkwy  
Plano TX 75025

### CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE  
*Anne Cassidy*

## IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.



Select Customer Insurance Center  
301 WOODS PARK DRIVE

CLINTON NY 13323

Policyholder, please call us at: (866) 467-8730

Agent, please call us at: (800) 962-6170

SCIC.NEWHARTFORD@THEHARTFORD.COM

**INSURANCE ENDORSEMENT  
ATTACHED**

**\*\*\* PLEASE REVIEW THE CHANGE \*\*\***

Enclosed is an endorsement for your business insurance policy. Please review it at your convenience. If you have questions or need to make further changes:

Policyholder, please call us at: (866) 467-8730

Agent, please call us at: (800) 962-6170 between 8 A.M. and 6 P.M. EASTERN TIME.

The premium billing will be mailed to you separately. You can expect to receive it soon.

Thank you for allowing us to service your business needs.

AFFINITY INS SRVCS INC/PHS /TECHNO

THE HARTFORD SELECT CUSTOMER INSURANCE CENTER

The Hartford Insurance Group  
Hartford Fire Insurance Company and its Affiliates  
Hartford Plaza, Hartford, Connecticut 06115

EXHIBIT B  
PAGE 6 OF 9

35440

\*0100039VG88900212





THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

# POLICY CHANGE

This endorsement changes the policy effective on the Inception Date of the policy unless another date is indicated below:

35441

Policy Number: 39 SBA VG8890 DW COPY

Named Insured and Mailing Address; SOLID BORDER, INC.

1806 TURNMILL  
SAN ANTONIO TX 78248

\*0100039VG88900212

Policy Change Effective Date: 01/11/12 Effective hour is the same as stated in the  
Declarations Page of the Policy.

Policy Change Number: 001

Agent Name: AFFINITY INS SRVCS INC/PHS /TECHNO  
Code: 320233

### POLICY CHANGES:

HARTFORD ACCIDENT AND INDEMNITY COMPANY

ANY CHANGES IN YOUR PREMIUM WILL BE REFLECTED IN YOUR NEXT BILLING  
STATEMENT. IF YOU ARE ENROLLED IN REPETITIVE EFT DRAWS FROM YOUR BANK  
ACCOUNT, CHANGES IN PREMIUM WILL CHANGE FUTURE DRAW AMOUNTS.  
THIS IS NOT A BILL.

NO PREMIUM DUE AS OF POLICY CHANGE EFFECTIVE DATE

BUSINESS LIABILITY OPTIONAL COVERAGES ARE REVISED

ADDITIONAL INSURED(S) ARE ADDED  
THE FOLLOWING ARE ADDITIONAL INSURED FOR BUSINESS LIABILITY COVERAGE IN  
THIS POLICY.

LOCATION 001 BUILDING 001  
PERSON/ORGANIZATION: SEE FORM IH 12 00

FORM NUMBERS OF ENDORSEMENTS ADDED AT ENDORSEMENT ISSUE:  
PRO RATA FACTOR: 0.540

THIS ENDORSEMENT DOES NOT CHANGE THE POLICY EXCEPT AS SHOWN.

Form SS 12 11 04 05 T  
Process Date: 01/18/12

Page 001 (CONTINUED ON NEXT PAGE)  
Policy Effective Date: 07/26/11  
Policy Expiration Date: 07/26/12

UW COPY

EXHIBIT B  
PAGE 7 OF 9

# POLICY CHANGE (Continued)

Policy Number: 39 SBA VG8890

Policy Change Number: 001

IH12001185 ADDITIONAL INSURED - PERSON-ORGANIZATION

Form SS 12 11 04 05 T  
Process Date: 01/18/12

Page 002

Policy Effective Date: 07/26/11  
Policy Expiration Date: 07/26/12

EXHIBIT B  
PAGE 8 OF 9

POLICY NUMBER: 39 SBA VG8890



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - PERSON-ORGANIZATION

THE CITY OF PLANO, THE CITY COUNCIL, ITS MEMBER, AGENTS, OFFICERS,  
DIRECTORS AND EMPLOYEE  
RISK MANAGEMENT DIVISION  
7501 A INDEPENDENCE PARKWAY  
PLANO, TX 75025

35442

\*0100039VG88900212



Form IH 12 00 11 85 T SEQ. NO. 003 Printed in U.S.A. Page 001

Process Date: 01/18/12

Expiration Date: 07/26/12

UW COPY

EXHIBIT B  
PAGE 9 OF 9

**AFFIDAVIT OF NO PROHIBITED INTEREST**

I, the undersigned declare that I am authorized to make this statement on behalf of **SOLID BORDER, INC.**, a Texas corporation, and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of **SOLID BORDER, INC.**, is employed by the City of Plano or is an elected or appointed official of the City of Plano within the restrictions of the Plano City Charter.

I am aware that Section 11.02 of the City Charter states:

“No officer or employee of the city shall have a financial interest, direct or indirect, in any contract with the city, nor shall be financially interested, directly or indirectly, in the sale to the city of any land, or rights or interest in any land, materials, supplies or service. The above provision shall not apply where the interest is represented by ownership of stock in a corporation involved, provided such stock ownership amounts to less than one (1) per cent of the corporation stock. Any violation of this section shall constitute malfeasance in office, and any officer or employee of the city found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the persons or corporation contracting with the city shall render the contract voidable by the city manager or the city council.”

I further understand and acknowledge that a violation of Section 11.02 of the City Charter at anytime during the term of this contract will render the contract voidable by the City.

**SOLID BORDER, INC.**

By: \_\_\_\_\_  
Signature

\_\_\_\_\_

Print Name

\_\_\_\_\_

Title

\_\_\_\_\_

Date

STATE OF TEXAS                   §  
   §  
COUNTY OF \_\_\_\_\_ §

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public, State of Texas



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular <input type="checkbox"/> Statutory
Council Meeting Date:	2/13/2012
Department:	Municipal Courts
Department Head	Don Stevenson
Agenda Coordinator (include phone #):      Nicole Griffin ext 7204	

**CAPTION**

To approve the purchase of Court Management System in the amount of \$970,278 from Tyler Technologies, Inc through an existing contract and authorizing the City Manager to execute all necessary documents. (City of Carrollton RFP #07-014)

**FINANCIAL SUMMARY**

NOT APPLICABLE       OPERATING EXPENSE       REVENUE       CIP

FISCAL YEAR: <b>2011-12 thru 2014-15</b>	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	1,777,317	0	<b>1,777,317</b>
Encumbered/Expended Amount	0	0	0	<b>0</b>
This Item	0	-657,645	-312,633	<b>-970,278</b>
BALANCE	0	1,119,672	-312,633	<b>807,039</b>

**FUND(s):**      MUNICIPAL COURT Technology FUND

**COMMENTS:**      Funds are available in the 2011-12 Municipal Court Technology Fund for the purchase of a court case management and imaging system through a cooperative purchasing program with another local government. The initial purchase price is \$624,022, plus travel and training costs reimbursement of \$33,623, for a total of \$657,645. In addition, three (3) annual Incode Notification fees of \$104,211 per year, or \$312,633 total, are included. The total project cost is \$970,278.

**STRATEGIC PLANNING GOAL:** The purchase of a court case management and imaging system through a cooperative purchasing program relates to the City's Goals of Financially Strong City with Service Excellence and Partnering for Community Benefit.

**SUMMARY OF ITEM**

Municipal Court staff recommends approval of the purchase of the case management and imaging system from Tyler Technologies, Inc. utilizing their contract with the City of Carrollton. The initial case management purchase price will be \$624,022 plus a one-time travel and training costs reimbursement of \$33,623. During each of the following three (3) years, there will be an annual license fee of \$79,211 and an Incode Notification fee of \$25,000, for a total of \$104,211 per year. Total project expenditure will be \$970,278. If a new case management system is not acquired, the courts will continue to have more frequent and more serious delays and work stoppages due to defective programming. The Judges and court clerks are experiencing almost daily down time for the Court2000 case management system and the failure of the system to merge documents and/or image documents. The City is authorized to purchase from a cooperative purchasing program with another local government or a local cooperative organization pursuant to Section 271 Subchapter F of the Local Government Code; and by doing so satisfies any State Law requiring local governments to seek competitive bids for items. (City of Carrollton RFP #07-014)



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

List of Supporting Documents: Memorandum	Other Departments, Boards, Commissions or Agencies



Date: February 6, 2012  
To: Diane Palmer-Boeck  
Purchasing Manager  
From: Don Stevenson  
Chief Municipal Judge

Subject: **Recommendation Memo**

After repeated problems with the Courthouse 2000 case management system now utilized by the Plano Municipal Court, the court staff is seeking a commercial-off-the-shelf case management and document management system that will be in compliance with all statutes governing municipal court operations and will accommodate the needs and demands of the multiple city departments for an effective case management and document management system.

If a new case management system is not acquired, the courts will continue to have more frequent and more serious delays and work stoppages due to defective programming. Support staff for the Courthouse2000 software has been reduced and there is little hope of that situation improving. The lack of proper programming caused the delay from September 1, 2011 to January 2012 of the monthly court reports due to the Office of Court Administration. The Judges and court clerks are experiencing almost daily down time for the Court2000 case management system and the failure of the system to merge documents and/or image documents.

The only cooperative purchasing agreements that cover court software are held by the cities of Carrollton and Arlington. Both agreements were evaluated and the Carrollton contract was determined to be the best value for Plano. The proposed purchase will be made from the contract resulting from City of Carrollton RFP # 07-014

The initial case management purchase price will be \$624,022 plus a one-time travel and training costs reimbursement of \$33,623. During each of the following three (3) years, there will be an annual license fee of \$79,211 and an Incode Notification fee of \$25,000, for a total of \$104,211 per year. Total project expenditure will be \$970,278. The initial purchase price and the annual fees will be paid from the Municipal Court Technology Fund.

The Municipal Court staff recommends that the City purchase the case management system and imaging system from Tyler Technologies, Inc.



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		02/13/12		
Department:		Public Works		
Department Head:		Gerald P. Cosgrove, P.E.		
Agenda Coordinator (include phone #):		Irene Pegues (7198)		Project No. 6158
<b>CAPTION</b>				
To approve a Professional Services Agreement by and between the City of Plano and CP&Y, Inc., in the amount of \$190,000, for Plano Park 1 – Street Reconstruction and Water Main Replacement project and authorizing the City Manager to execute all necessary documents.				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: <b>2011-12</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	190,000	995,000	<b>1,185,000</b>
Encumbered/Expended Amount	0	0	0	<b>0</b>
This Item	0	-190,000	0	<b>-190,000</b>
<b>BALANCE</b>	<b>0</b>	<b>0</b>	<b>995,000</b>	<b>995,000</b>
<b>FUND(S):    STREET IMPROVEMENT CIP</b>				
<b>COMMENTS:</b> Funds are included in the FY 2011-12 Street Improvement CIP. This item, in the amount of \$190,000 will leave a current year balance of \$0 for the Plano Park 1 project.				
<b>STRATEGIC PLAN GOAL:</b> Engineering design services for street reconstruction and waterline replacement relate to the City's Goal of Financially Strong City with Service Excellence.				
<b>SUMMARY OF ITEM</b>				
This agreement is for engineering design services required for the reconstruction of approximately 3,730 linear feet (LF) of four concrete residential streets pavement to include a new 8" waterline along the entire length of four streets: Mimosa Avenue from P Avenue to Willow Lane (approximately 760 LF), Laurel Lane from Jasmine Lane to P Avenue (approximately 1,160 LF), Jasmine Lane from Hawthorne Lane to Japonica Lane (approximately 610 LF), and Japonica Lane from Jasmine Lane to P Avenue (approximately 1,200 LF).				
The contract fee total is \$190,000.00 and is detailed as follows:				
<b>BASIC SERVICES</b>				
Research and Data Collection		\$1,200		
Design Survey		\$37,000		
Preliminary Design		\$73,500		
Final Design		\$45,800		
Bid Phase Services		\$4,500		

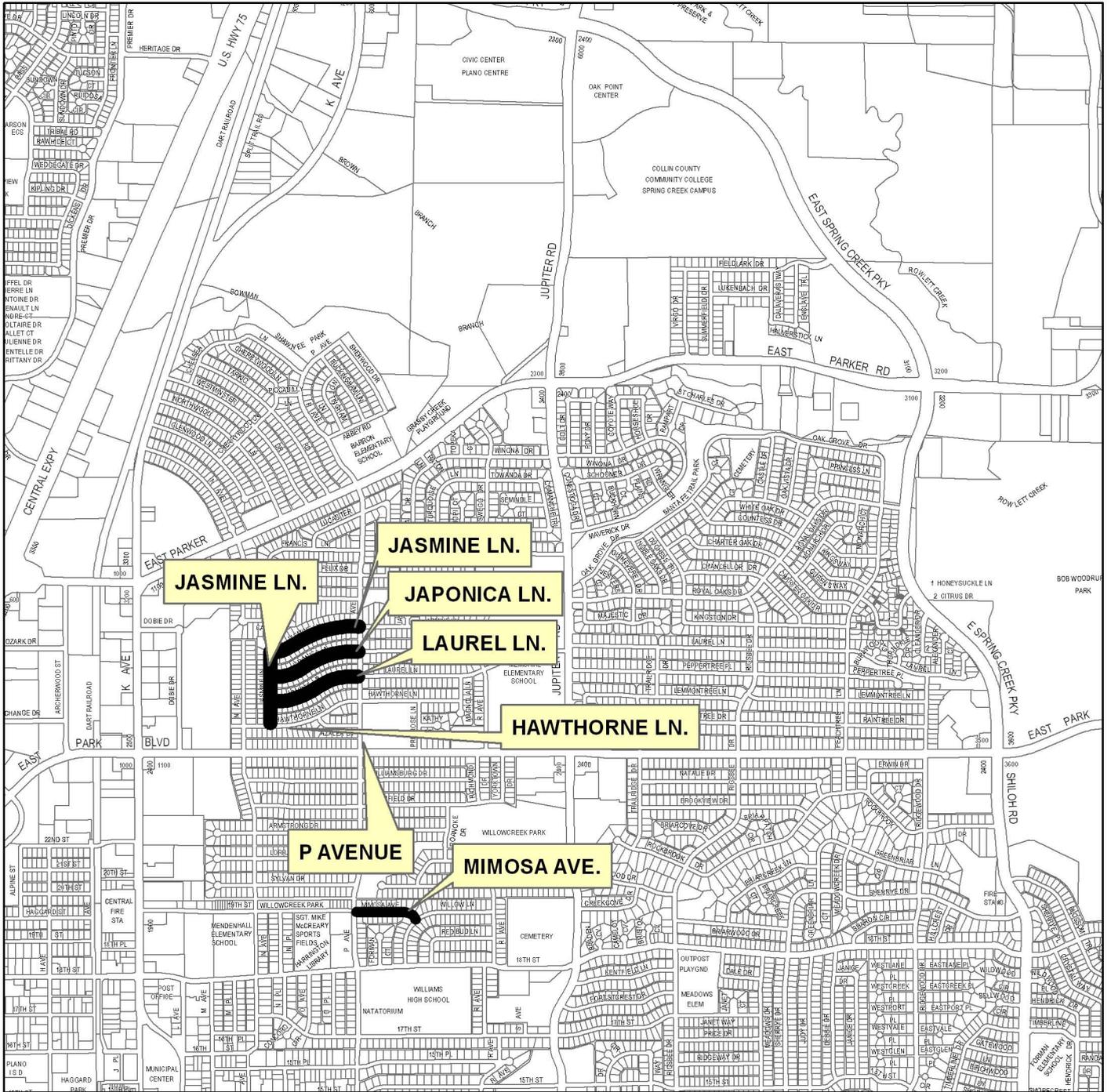


**CITY OF PLANO  
COUNCIL AGENDA ITEM**

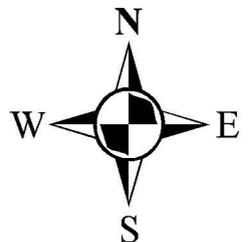
Construction Administration	\$5,500
Record Drawings	\$3,500
Construction Control Survey	<u>\$9,000</u>
<b>SUBTOTAL BASIC SERVICES</b>	<b>\$180,000</b>
<b>SPECIAL SERVICES</b>	
Easement Documents (4 each @ \$2,500)	<u>\$10,000</u>
<b>SUBTOTAL SPECIAL SERVICES</b>	<b>\$10,000</b>
	<hr/>
<b>TOTAL FEE</b>	<b>\$190,000</b>

List of Supporting Documents: Location Map; Engineering Services Agreement	Other Departments, Boards, Commissions or Agencies N/A
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# PLANO PARK 1 STREET RECONSTRUCTION AND WATER MAIN REPLACEMENT PROJECT 6158



CITY OF PLANO  
PUBLIC WORKS DEPT.



**PLANO PARK 1  
STREET RECONSTRUCTION AND WATER MAIN REPLACEMENT**

**PROJECT NO. 6158**

**ENGINEERING SERVICES AGREEMENT**

**THIS AGREEMENT** is made and entered by and between the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "City", and **CP&Y, INC.**, a **TEXAS** Corporation, hereinafter referred to as "Engineer", to be effective from and after the date as provided herein.

**WITNESSETH:**

**WHEREAS**, the City desires to engage the services of the Engineer to prepare construction plans, specifications, details and special provisions and to perform other related engineering services in connection with the **PLANO PARK 1 - STREET RECONSTRUCTION AND WATER MAIN REPLACEMENT** project located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

**WHEREAS**, the Engineer desires to render such engineering services for the City upon the terms and conditions provided herein.

**NOW, THEREFORE**, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

**I. Employment of the Engineer**

The City hereby agrees to retain the Engineer to perform professional engineering services in connection with the Project. Engineer agrees to perform such services in accordance with the terms and conditions of this Agreement.

**II. Scope of Services**

The parties agree that Engineer shall perform such services as are set forth and described in Exhibit "A", which is attached hereto and thereby made a part of this Agreement. The parties understand and agree that deviations or modifications in the form of written contract modifications may be authorized from time to time by the City.

### **III. Schedule of Work**

The Engineer agrees to commence work immediately upon execution of this Agreement, and to proceed diligently with said work, except for delays beyond the reasonable control of Engineer, to completion as described in the Completion Schedule, attached hereto as Exhibit "B" and thereby made a part of this Agreement.

### **IV. Compensation and Method of Payment**

The parties agree that Engineer shall be compensated for all services provided pursuant to this Agreement in the amount and manner described and set forth in the Payment Schedule attached hereto and incorporated herein as Exhibit "C". The contract amount specified in Exhibit "C" shall not be exceeded without the written permission of the City.

### **V. Information to be Provided by the City**

The City agrees to furnish, prior to commencement of work, all that information requested by Engineer and available in City's files.

### **VI. Insurance**

Engineer agrees to meet all insurance requirements, and to require all consultants who perform work for Engineer to meet all insurance requirements, as set forth on Exhibit "D", which is attached hereto and thereby made a part of this Agreement.

Engineer agrees to notify the City of any changes in insurance policy coverage, including but not limited to changes in limits and cancellation. The Engineer shall notify the City in writing of any changes within forty-eight (48) hours of the change. The Engineer's notice shall include a description of the changes and how those changes vary from the insurance requirements of the contract/agreement.

### **VII. INDEMNITY**

**THE ENGINEER AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ENGINEER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY**

NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE ENGINEER, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE ENGINEER IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE ENGINEERS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

ENGINEER AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF ENGINEER'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF ENGINEER'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. ENGINEER SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF ENGINEER FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND ENGINEER SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

#### **VIII. Independent Contractor**

Engineer covenants and agrees that Engineer is an independent contractor and not an officer, agent, servant or employee of City; that Engineer shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Engineer, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Engineer.

### **IX. Assignment and Subletting**

The Engineer agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The Engineer further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Engineer from its full obligations to the City as provided by this Agreement.

### **X. Audits and Records/Prohibited Interest**

The Engineer agrees that at any time during normal business hours and as often as City may deem necessary, Engineer shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, all for a period of one (1) year from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

The Engineer agrees that it is aware of the prohibited interest requirements of the City Charter and Code of Conduct and will abide by the same. Further, a lawful representative of Engineer shall execute the affidavit shown in Exhibit "E". Engineer understands and agrees that the existence of a prohibited interest during the term of this contract will render the contract voidable.

### **XI. Contract Termination**

The parties agree that City shall have the right to terminate this Agreement with or without cause upon thirty (30) days written notice to Engineer. In the event of such termination, Engineer shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Engineer in connection with this Agreement. Engineer shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination.

### **XII. Engineer's Opinion of Probable Construction Costs**

The parties recognize and agree that any and all opinions of probable construction costs prepared by Engineer in connection with the Project represent the best judgment of Engineer as a design professional familiar with the construction industry, but that the Engineer does not guarantee that any bids solicited or received in connection with the Project will not vary from opinions prepared by Engineer.

### **XIII. Ownership of Documents**

Original drawings and specifications are the property of the Engineer; however, the Project is the property of the City and Engineer may not use the drawings and specifications therefor for any purpose not relating to the Project without City's consent. City shall be furnished with such reproductions of drawings and specifications as City may reasonably require. Upon completion of the work or any earlier termination of this Agreement under Article XI, Engineer will revise drawings to reflect changes made during construction and he will promptly furnish the City with one (1) complete set of reproducible record prints. Prints shall be furnished, as an additional service, at any other time requested by City. All such reproductions shall be the property of the City who may use them without Engineer's permission for any proper purpose including, but not limited to, additions to or completion of the Project. However, use of the documents for other than their intended purpose shall be at the sole risk of the City.

### **XIV. Complete Contract**

This Agreement, including the Exhibits lettered "A" through "E", constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

### **XV. Mailing of Notices**

Unless instructed otherwise in writing, Engineer agrees that all notices or communications to City permitted or required under this Agreement shall be addressed to City at the following address:

City of Plano  
Public Works Department, Suite 250  
P.O. Box 860358  
Plano, TX 75086-0358  
Attn: Shahrzad Tavana

City agrees that all notices or communications to Engineer permitted or required under this Agreement shall be addressed to Engineer at the following address:

CP&Y, Inc.  
1820 Regal Row, Suite 200  
Dallas, TX 75235  
Attn: Lawrence Beenken, P.E.

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

## **XVI. Miscellaneous**

### **A. Paragraph Headings:**

The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision in this Agreement.

### **B. Contract Interpretation:**

Although this Agreement is drafted by the City, should any part be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

### **C. Venue/Governing Law:**

The parties agree that the laws of the State of Texas shall govern this Agreement, and that it is performable in Collin County, Texas. Exclusive venue shall lie in Collin County, Texas.

### **D. Successors and Assigns:**

City and Engineer, and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

### **E. Severability:**

In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.

### **F. Effective Date:**

This Agreement shall be effective from and after execution by both parties hereto.

G. Authority to Sign:

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

**SIGNED** on the date indicated below.

DATE: 1/23/2012

CP&Y, INC.  
A Texas Corporation

BY: Michael S. Hartzler  
Michael S. Hartzler, P.E.  
SENIOR VICE PRESIDENT

**CITY OF PLANO, TEXAS**

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
Bruce D. Glasscock  
CITY MANAGER

**APPROVED AS TO FORM:**

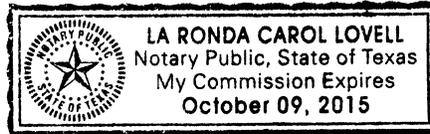
\_\_\_\_\_  
Diane C. Wetherbee  
CITY ATTORNEY

**ACKNOWLEDGMENTS**

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

This instrument was acknowledged before me on the 23<sup>rd</sup> day of JANUARY, 2012, by **MICHAEL S. HARTZLER, P.E.**, Senior Vice President of CP&Y, Inc., a Texas corporation, on behalf of said corporation.

  
\_\_\_\_\_  
Notary Public, State of Texas



STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, by **BRUCE D. GLASSCOCK**, City Manager of the City of Plano, Texas, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

\_\_\_\_\_  
Notary Public, State of Texas

**EXHIBIT “A”**  
**SCOPE OF SERVICES**

**PLANO PARK 1 - STREET RECONSTRUCTION AND  
WATER MAIN REPLACEMENT**

**PROJECT No. 6158**

**PROJECT DESCRIPTION:**

Reconstruction of the concrete street pavement and replacement the existing 8” water main of the following;

- Mimosa Avenue from P Avenue to Willow Lane (Approximately 760 LF)
  - Laurel Lane from Jasmine Lane to P Avenue (Approximately 1160 LF main)
  - Jasmine Lane from Hawthorne Lane to Japonica Lane (Approximately 610 LF)
  - Japonica Lane from Jasmine Lane to P Avenue (Approximately 1200 LF)
1. The street paving shall be 27-ft. back-to-back, 6-inch 3000 PSI reinforced concrete pavement on 6-inch lime stabilized subgrade per City of Plano Standard Construction Details. No pavement structure design will be performed. No geotechnical testing will be performed to determine if special design considerations should be employed.
  2. Existing driveways will be reconstructed within the project limits per City details.
  3. Existing sidewalks including barrier free ramps will be reconstructed within the project limits per City details.
  4. The existing water main is to be replaced where it is under the proposed pavement reconstruction and shall include replacement of existing water services. Fire hydrant coverage will be analyzed and improved to current standards if necessary. Existing fire hydrants will be replaced with the existing fire hydrants being turned over to the City.
  5. The project will include curb drainage capacity analysis but will not include upsizing of the existing storm sewer. Addition of inlets will be included where gutter capacity is exceeded. If desired by the City, the design will include manholes for access into the existing storm sewer within the project limits. The approximate location of the existing storm sewer will be determined using “as-built” plans and from surface features. No subsurface investigations will be performed to determine the actual location of the existing storm sewer.
  6. No additional ROW or easements are anticipated to complete the project.

The proposed work consists of the following engineering design and surveying services:  
Basic Services

#### **A. Design Standards**

1. This project shall be designed in accordance with the following guidelines, where practical:
  - Geodetic Monumentation Manual
  - Manual for Right-of-Way Management
  - Storm Drainage Design Manual
  - Erosion and Sediment Control Manual
  - Thoroughfare Standard Rules and Regulations
  - Manual for the Design of Water & Sanitary Sewer Lines
  - Standard Construction Details
  - Barrier Free Ramp Details
  - NCTGOG Standard Specifications for Public Works Construction
  - Special Provisions to Standard Specifications for Public Works Construction
  - Sample Plan Set (Provided by City)
2. All plans submitted to the City shall be signed and sealed in accordance with state law.
3. The City shall provide guidance regarding project specific design issues if needed.

#### **B. Research and Data Collection**

1. Meet with City of Plano engineering staff and obtain design criteria, pertinent utility plans, street plans, plats and ROW maps, existing easement information, recent bid tabulations from projects similar in scope and other information available for the project area.
2. Meet with the City of Plano project manager and conduct an on-site review and walk through.

#### **C. Design Survey**

1. Establish a horizontal and vertical control network and project control baseline for the project area. The network and baseline are to be tied into the existing City of Plano control network.
2. Establish horizontal and vertical project control monumentation.
3. Tie right-of-way lines and corners that can be found via pin finder, property lines and corners/monuments, buildings, fence lines, trees 4-inches in diameter and larger, edges of pavements and all other visible surface features to the project control baseline. Existing visible above ground utility features shall be located and referenced by utility name (i.e. Oncor Electric, Verizon Telephone, Atmos Gas, etc.).

4. Vertical topographic information tying pavement, manholes (tops and inverts), storm drain inlets (tops and inverts), and other improvements as needed within the project areas for the design.
5. Sufficient survey data shall be obtained so that a detailed Digital Terrain Model (DTM) may be prepared to provide existing and proposed grade cross sections at a fifty-foot (50') interval relative to the project baseline. Cross sections are for project design review and quantity takeoffs and may not be a part of the final construction plan set.
6. Topographic survey and cross section work shall extend approximately 50 feet lengthwise beyond the proposed construction area and approximately 10 feet beyond the ROW. Additional data more than 10 feet beyond the ROW may be needed for leadwalks.
7. When underground utilities are exposed, tie to project control baseline.
8. Identify the street address of all properties adjacent to the proposed construction and show on drawings.

#### **D. Preliminary Design**

1. Prepare preliminary construction plans. Prepare the following sheets (22" x 34") at the engineering scale indicated:
  - Cover Sheet.
  - General Notes Sheet.
  - Project layout control sheet. Scale 1" = 100'.
  - Quantity sheet. (sheet by sheet breakdown of all quantities).
  - Typical sections and detail sheets.
  - Construction phasing and temporary traffic control sheets. Scale 1" = 40' or larger.
  - Paving plan & profile sheets for street improvements. The consultant will need to evaluate the existing street lights on the project street to check that adequate lighting exists. The City will provide the criteria. If additional lights are needed, new conduit and street light foundation locations (provided by the City) will be included in the project with the information shown on the paving plans. Scale 1" = 20' H; 1" = 5' V.
  - Drainage area map (with drainage calculations) for street/drainage improvements. Scale 1" = 100'. The drainage analysis will include evaluation of street and inlet capacities for compliance with current City standards as set forth in the City's Storm Drainage Design Manual. Hydraulic analysis of existing storm drain system will be confined to existing project limits. Starting hydraulic grade elevations shall be based on existing as-built plans or other reasonable assumptions confirmed by the City. If hydraulic analysis is required outside of the

project limits, it shall be done by contract modification. (This information will be prepared but only included in the plans if improvements are required. If required, it will be included by a contract modification)

- Storm drain improvement plan and profile sheets (if required). Scale 1" = 20' H; 1" = 5' V. (These improvements will be included if shown to be required as a result of the drainage area maps/drainage calculations. If improvements are required, the design/plan preparation shall be done under a contract modification)
- Water Utility Replacement Plans (plan only). Scale 1" = 20'.
- SWPPP sheet meeting TCEQ and City of Plano requirements. Scale 1" = 40'. Include the City WORD file form, "City of Plano CIP Projects – SWPPP Operator Requirements" as a sheet in the plans as part of the SWPPP. Include erosion control details from City Standards as required.
- Final buttoning and signage plan sheets. Scale 1" = 40'. (to be shown on Paving Plans if practical)
- Cross-sections. Scale 1" = 20' H; 1" = 5' V.

Information required can be combined on sheets if the information can be clearly shown and is approved by the City of Plano project manager.

2. Coordinate with affected utilities such as gas, telephone, cable TV and electric to obtain available information for the location of their facilities. Coordination effort shall include the following tasks: a) contact DigTess prior to topographic survey to request field locates of existing underground utilities within the project limits (the City of Plano will mark water, sanitary sewer and storm sewer locations if not marked by DigTess); b) using email or one-time mailing, contact utility companies using information provided by the City to request maps or other information showing the locations of their facilities; c) send preliminary and final plans to utility companies and request their review for possible conflicts with their facilities; d) if requested by the City, attend one utility coordination meeting including representatives of all affected utilities to discuss project scope and any necessary relocation work; e) send invitations to utility company representatives to a project pre-construction meeting. Other coordination efforts, if required, shall be additional services.
3. Prepare outline of any special technical specifications needed for the project (if any).
4. Prepare an estimate of construction quantities and develop the preliminary statement of probable construction cost.
5. Submit five (5) sets of preliminary plans, and one (1) outline of special technical specifications and preliminary statement of probable construction cost to the City for review.

- Engineering
- Public Works
- Inspectors
- Transportation
- File Set

6. Meet with the City to discuss City comments on preliminary plans, specifications and cost estimates.
7. Distribute the preliminary plans and proposed schedule for bidding and start of construction to local utility companies to obtain information regarding impact to their facilities.

#### **E. Final Design**

1. Revise preliminary plans incorporating comments from the City of Plano.
2. Incorporate comments from the utility companies.
3. Finalize construction plans for proposed improvements.
4. Finalize special technical specifications and special conditions (if any).
5. Incorporate standard details into the construction plans and prepare additional details as required.
6. Take off final construction quantities and prepare final construction cost estimate.
7. Prepare draft bid schedule of items and quantities.
8. Submit six (6) sets of pre-final plans, one (1) set of special technical specifications, draft bid schedule and final statement of probable construction cost to the City for review.
9. Incorporate City final comments into the plans and bid documents.
10. Submit three (3) sets of final black/blue line prints, three (3) bound copies of the bid documents and one unbound original bid document set to the City of Plano.
11. Attend a utility coordination meeting to start relocation process with affected franchise utilities, if necessary. Distribute copy of final plans and proposed schedule for bid letting and construction to all affected franchise utilities.
12. Submit one (1) set of final black/blue line prints and one (1) bound copy of the bid documents to the designated Material Testing Laboratory.

#### **F. Bid Phase Services**

1. Assist the City staff in advertising for bids.
2. Furnish plans and specifications for bidding. Cost for these to be recouped by non-refundable deposit from contractors. Maintain a list of plan holders.
3. Furnish plans and bid documents for up to four plan review rooms to be determined by the City. These documents are to be furnished at no cost to the plan review rooms.
4. Assist the City staff in conducting a pre-bid conference, if required.
5. Prepare and distribute addenda to bid documents as necessary.

6. Assist City staff as required in bid opening. Submit list of plan holders to the City, 48-hours prior to the bid opening.
7. Submit a CD-ROM disk of the bid set plans in a PDF format.
8. Provide bid tabulation to the City of Plano within four working days of the bid letting.
9. Evaluate the low and second low bidders. Prepare letter of recommendation to the City of Plano for awarding a contract to the lowest responsible bidder within four working days of the bid letting.
10. Assist City staff in a pre-construction conference arranged by the City.
11. Furnish up to eleven (11) full size and four (4) half size sets of final construction plans and seven (7) sets of the contract documents manual to the City for construction.

#### **G. Construction Administration**

1. Provide written responses to requests for information or clarifications.
2. Review submittals from the Contractor.
3. Prepare construction "Record Drawings" based upon clear and legible red-line mark-ups and other information provided by the construction contractor(s). Submit one blackline set to the City and two (2) CD-ROM disks containing scanned images of the 22" x 34" final "as constructed" blackline drawings (with "record drawing" stamps bearing the signature of the Engineer and the date). The drawings shall be scanned 1 to 1 as Group 4 TIF files at a minimum resolution of 200 dots per inch and a maximum resolution of 400 dots per inch. The TIF files shall be legible and shall include any post processing that may be required to enhance image quality (e.g., de-speckling, de-shading, de-skewing, etc.). Each file shall be named in numeric order.

#### **H. Construction Control Survey**

1. Set vertical and horizontal control stakes for construction at 500' intervals, or a minimum of one at each end of the project.

#### **Special Services**

##### **I. Easement Documents**

1. Prepare permanent and or temporary easement documents with field notes and drawings signed and sealed by a licensed surveyor on a per parcel basis.

#### **The Following Assumptions Are Made:**

- The proposed project will be reconstructed within the existing right-of-way.
- No additional right-of-way or easements will be required to complete the project.
- Project design will proceed without interruption from project initiation to completion.

### **Services to be provided to CP&Y by the City:**

The following items are to be provided to CP&Y by the City prior to the start of survey and design.

- As-Built plans of project area improvements.
- Bid document forms other than bid schedule.
- Pavement structure design, if non-standard.
- Utility Company contact information.
- Sample plan set.

### **Services Not Provided by CP&Y:**

The following is a list of services that are *not* part of this original scope, unless specifically included in the Detailed Scope of Services for each project segment. These services may be provided later at an additional fee:

- Geotechnical services before and during construction.
- Separate permanent signing plans.
- Separate pavement striping plans.
- Pavement structure or subgrade design.
- Drainage studies.
- Design of stormwater detention facilities.
- Preparation of temporary and/or construction easements or right of way documents. The need for these will be identified as part of this scope. The preparation of the documents can be performed as extra services.
- Construction Phase Surveying Services not specifically indicated above.
- Permitting.
- Public/resident contact and coordination.
- SUE other than the utility coordination and survey services described above.
- Structural design
- Electrical and/or lighting design.

**EXHIBIT "B"**

**SCHEDULE OF WORK**

**STREET RECONSTRUCTION AND WATER MAIN REPLACEMENT  
PROJECT NO. 6158**

<b>ACTIVITY</b>	<b>COMPLETION TIME (Calendar Days)</b>
1. Notice to Proceed	
2. Research and Data Collection	7
3. Design Survey	21
4. Preliminary Design	56
5. City Review	14
6. Final Design (Pre-Final Submittal) / ROW & Easement Documents	28
7. City Review	14
8. Final Design/Documents for Bidding	14
9. City Review	7
10. Advertise for Bids	21
11. Receive Bids	7
12. Recommendation	7
13. Prepare Council Agenda	7
14. Council Award	7
15. Prepare/Execute Contract	14
16. Schedule Preconstruction Meeting	7
17. Notice to Proceed	7
18. Construction	240

**EXHIBIT C  
COMPENSATION AND METHOD OF PAYMENT**

**STREET RECONSTRUCTION AND WATER MAIN REPLACEMENT  
PROJECT No. 6158**

Services performed under this Engineering Services Agreement shall be paid on a lump sum basis at the amounts shown on the breakdown below:

<b>TASK</b>	<b>FEE</b>
<u><i>BASIC SERVICES</i></u>	
B. Research and Data Collection	\$1,200
C. Design Survey	\$37,000
D. Preliminary Design	\$73,500
E. Final Design	\$45,800
F. Bid Phase Services	\$4,500
G1. Construction Administration	\$5,500
G2. Record Drawings	\$3,500
H. Construction Control Survey	\$9,000
<b>SUBTOTAL BASIC SERVICES</b>	<b>\$180,000</b>
<u><i>SPECIAL SERVICES</i></u>	
I. Easement Documents (4 each @ \$2,500)	\$10,000
<b>SUBTOTAL SPECIAL SERVICES</b>	<b>\$10,000</b>
<b>TOTAL FEE</b>	<b>\$190,000</b>

## EXHIBIT "D"

### ENGINEERING

#### INSURANCE

**INSURANCE:** (Review this section carefully with your insurance agent prior to bid or proposal submission. See "Insurance Checklist" on the last page or specific coverages applicable to this contract).

#### **1. General Insurance Requirements:**

- 1.1 The Engineer (hereinafter called "Engineer") shall not start work under this contract until the Engineer has obtained at his own expense all of the insurance called for here under and such insurance has been approved by the City. Approval of insurance required of the Engineer will be granted only after submission to the Purchasing Agent of original, signed certificates of insurance or, alternately, at the City's request, certified copies of the required insurance policies.
- 1.2 All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, without first providing the Risk Manager, City of Plano, at least ten (10) days prior written notice."

**NOTE: The words "endeavor to" and "but failure to mail such notice shall impose no obligation to liability of any kind upon the company, its agents or representatives" are to be eliminated from the cancellation provision of standard ACORD certificates of insurance.**

- 1.3 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the Engineer from any liability or obligation imposed upon the provisions of the Contract.
- 1.4 The City of Plano (including its elected and appointed officials, agents, volunteers, and employees) is to be named as an additional insured under Engineer's General Liability Policy, and the certificate of insurance, or the certified policy, if requested, must so state. Coverage afforded under this paragraph shall be primary as respects the City, its elected and appointed officials, agents and employees.
  - 1.4.1 The following definition of the term "City" applies to all policies issued under the contract:

The City Council of the City of Plano and any affiliated or subsidiary Board, Commission Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board Commission, Authority, Committee, or Independent Agency is either a Body Politic created by the City Council of the City of Plano, or one in which controlling interest is vested in the City of Plano; and City of Plano Constitutional Officers.
- 1.5 The Engineer shall provide insurance as specified in the "Insurance Checklist" (Checklist) found on the last page of the bid or proposal form. Full limits of insurance required in the Checklist of this agreement shall be available for claims arising out of this agreement with the City of Plano.

- 1.6 Engineer agrees to defend and indemnify the City of Plano, its officers, agents and employees as provided in Paragraph VII. of this contract.
- 1.7 Insurance coverage required in these specifications shall be in force throughout the Contract Term. Should the Engineer fail to provide acceptable evidence of current insurance within seven (7) days of written notice at any time during the Contract Term, the City shall have the absolute right to terminate the Contract without any further obligation to the Engineer, and the Engineer shall be liable to the City for the entire additional cost of procuring performance and the cost of performing the incomplete portion of the Contract at time of termination.
- 1.8 Written requests for consideration of alternate coverages must be received by the City Purchasing Manager at least ten (10) working days prior to the date set for receipt of bids or proposals. If the City denies the request for alternative coverages, the specified coverages will be required to be submitted.
- 1.9 All required insurance coverages must be acquired from insurers authorized to do business in the State of Texas and acceptable to the City. The City prefers that all insurers also have a policyholder's rating of "A-" or better, and a financial size of "Class VI" or better in the latest edition of A.M. Best, or A or better by Standard and Poors, unless the City grants specific approval for an exception.
- 1.10 Any deductibles shall be disclosed in the Checklist and all deductibles will be assumed by the Engineer. Engineer may be required to provide proof of financial ability to cover deductibles, or may be required to post a bond to cover deductibles.

**2. Engineer's Insurance - "Occurrence" Basis:**

- 2.1 The Engineer shall purchase the following insurance coverages, including the terms, provisions and limits shown in the Checklist.
  - 2.1.1 Commercial General Liability - Such Commercial General Liability policy shall include any or all of the following as indicated on the Checklist:
    - i. General aggregate limit is to apply per project;
    - ii. Premises/Operations;
    - iii. Actions of Independent Contractors;
    - iv. Contractual Liability including protection for the Engineer from claims arising out of liability assumed under this contract;
    - v. Personal Injury Liability including coverage for offenses related to employment;
    - vi. Explosion, Collapse, or Underground (XCU) hazards; if applicable. This coverage required for any and all work involving drilling, excavation, etc.
  - 2.1.2 Business Automobile Liability including coverage for any owned, hired, or non-owned motor vehicles and automobile contractual liability.

- 2.1.3 Workers' Compensation - statutory benefits as required by the State of Texas, or other laws as required by labor union agreements, including Employers' Liability coverage.

### **3.0 Engineer's Insurance – Claims Made**

#### Professional Errors and Omissions

The Engineer shall carry Professional Liability insurance which will pay for injuries arising out of negligent errors or omissions in the rendering, or failure to render professional services under the contract, for the term of the Contract and up to three years after the contract is completed in the amount shown in the Checklist.

Professional Errors and Omissions, Limit \$1,000,000  
per claim and aggregate of \$2,000,000

# ENGINEERING

## City of Plano - Insurance Checklist

("X" means the coverage is required.)

<u>Coverages Required</u>	<u>Limits (Figures Denote Minimums)</u>
<input checked="" type="checkbox"/> 1. Workers' Compensation & Employers' Liability	Statutory limits of State of Texas \$100,000 accident \$100,000 disease \$500,000 policy limit disease
<input type="checkbox"/> 2. For Future Use	
<input type="checkbox"/> 3. City Approved Alternative Workers' Comp. Program	\$150,000 medical, safety program
<input checked="" type="checkbox"/> 4. General Liability	Complete entry No. 26 Minimum \$500,000 each occurrence \$1,000,000 general aggregate
<input checked="" type="checkbox"/> 5. General aggregate applies per project (CGL)	
<input checked="" type="checkbox"/> 6. Premises/Operations	(Items No. 3-10 & 12 require)
<input checked="" type="checkbox"/> 7. Independent Contractors	<u>\$500,000</u> combined single limit for bodily injury and property damage
<input type="checkbox"/> 8. Products	damage each occurrence with
<input type="checkbox"/> 9. Completed Operations	\$1,000,000 general aggregate that applies to project under contract
<input checked="" type="checkbox"/> 10. Contractual Liability	
<input checked="" type="checkbox"/> 11. Personal Injury Liability	\$500,000 each offense & aggregate
<input type="checkbox"/> 12. XCU Coverages	
<input checked="" type="checkbox"/> 13. Automobile Liability	\$500,000 Bodily Injury & Property
<input checked="" type="checkbox"/> 14. Owned, Hired & Non-owned	Damage each accident
<input type="checkbox"/> 15. Motor Carrier Act Endorsement	
<input checked="" type="checkbox"/> 16. Professional Liability	\$1,000,000 each claim \$2,000,000 aggregate
<input type="checkbox"/> 17. Garage Liability	\$_____ BI & PD each occurrence





**EXHIBIT "E"**

**AFFIDAVIT OF NO PROHIBITED INTEREST**

I, the undersigned declare that I am authorized to make this statement on behalf of CP&Y, Inc. and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of CP&Y, Inc. is employed by the City of Plano or is an elected or appointed official of the City of Plano within the restrictions of the Plano City Charter.

I am aware that Section 11.02 of the City Charter states:

"No officer or employee of the city shall have a financial interest, direct or indirect, in any contract with the city, nor shall be financially interested, directly or indirectly, in the sale to the city of any land, or rights or interest in any land, materials, supplies or service. The above provision shall not apply where the interest is represented by ownership of stock in a corporation involved, provided such stock ownership amounts to less than one (1) per cent of the corporation stock. Any violation of this section shall constitute malfeasance in office, and any officer or employee of the city found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the persons or corporation contracting with the city shall render the contract voidable by the city manager or the city council."

I further understand and acknowledge that a violation of Section 11.02 of the City Charter at anytime during the term of this contract will render the contract voidable by the City.

CP&Y, Inc.

Name of Consultant

By:

Michael S Hartzler  
Signature

Michael S Hartzler  
Print Name

& Vice President  
Title

1-23-2012  
Date

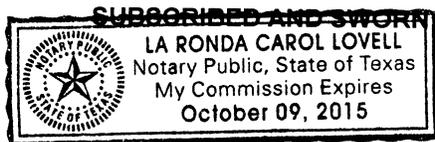
STATE OF TEXAS

§

COUNTY OF DALLAS

§

§



~~SUBSCRIBED AND SWORN TO~~ before me this 23<sup>rd</sup> day of JANUARY, 2012.

La Ronda Carol Lovell  
Notary Public, State of Texas



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular <input type="checkbox"/> Statutory
Council Meeting Date:	2/13/12
Department:	Parks and Recreation
Department Head	Amy Fortenberry
Agenda Coordinator (include phone #): <b>Susan Berger (7255)</b>	

**CAPTION**

Approval of a Landscape Architecture Services Agreement by and between the City of Plano and la terra studio, inc., in the amount of \$58,723 for Improvements to Carpenter Park and authorizing the City Manager or his designee to execute all necessary documents.

**FINANCIAL SUMMARY**

NOT APPLICABLE       OPERATING EXPENSE       REVENUE       CIP

FISCAL YEAR: <b>2011-12</b>	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	116,040	883,960	600,000	<b>1,600,000</b>
Encumbered/Expended Amount	-116,040	-99,387	0	<b>-215,427</b>
This Item	0	-58,723	0	<b>-58,723</b>
BALANCE	0	725,850	600,000	<b>1,325,850</b>

**FUND(S):      CAPITAL RESERVE CIP**

**COMMENTS:** Funds are included in the FY 2011-12 Capital Reserve CIP. This item, in the amount of \$58,723, will leave a current year balance of \$725,850 for the Athletic Fields Renovation project.

**STRATEGIC PLAN GOAL:** Architectural services for Carpenter Park Northeast relate to the City's Goal of Great Neighborhoods - 1st Choice to Live.

**SUMMARY OF ITEM**

This agreement provides for the preparation of plans and specifications for Improvements to Carpenter Park. Improvements include a new restroom building, irrigation pump room, electrical equipment room, storage room, connection to an existing ball field plaza and connection to Preston Ridge Trail. The improvements will be located adjacent to Preston Ridge Trail and existing baseball fields. The restrooms will serve athletic field users and trail users.

The total contract fee is \$58,723 and includes basic services, reimbursable expenses, surveying, and engineering services. The basic services are \$32,250 and additional services including surveying, and engineering services are \$26,473.

The total construction estimate for the project is \$500,000. The basic service fee, including reimbursable expenses is 6.45% of the estimated construction budget. This fee is typical for projects of this size and type. The total fee, including surveying and engineering services is 11.74% of the estimated construction budget. The



## CITY OF PLANO COUNCIL AGENDA ITEM

engineering and surveying fee is slightly higher than typical due to the distance and difficulty in providing sewer service to the restroom building.

la terra studio, inc. is included on the 2011-12 list of qualified consultants.

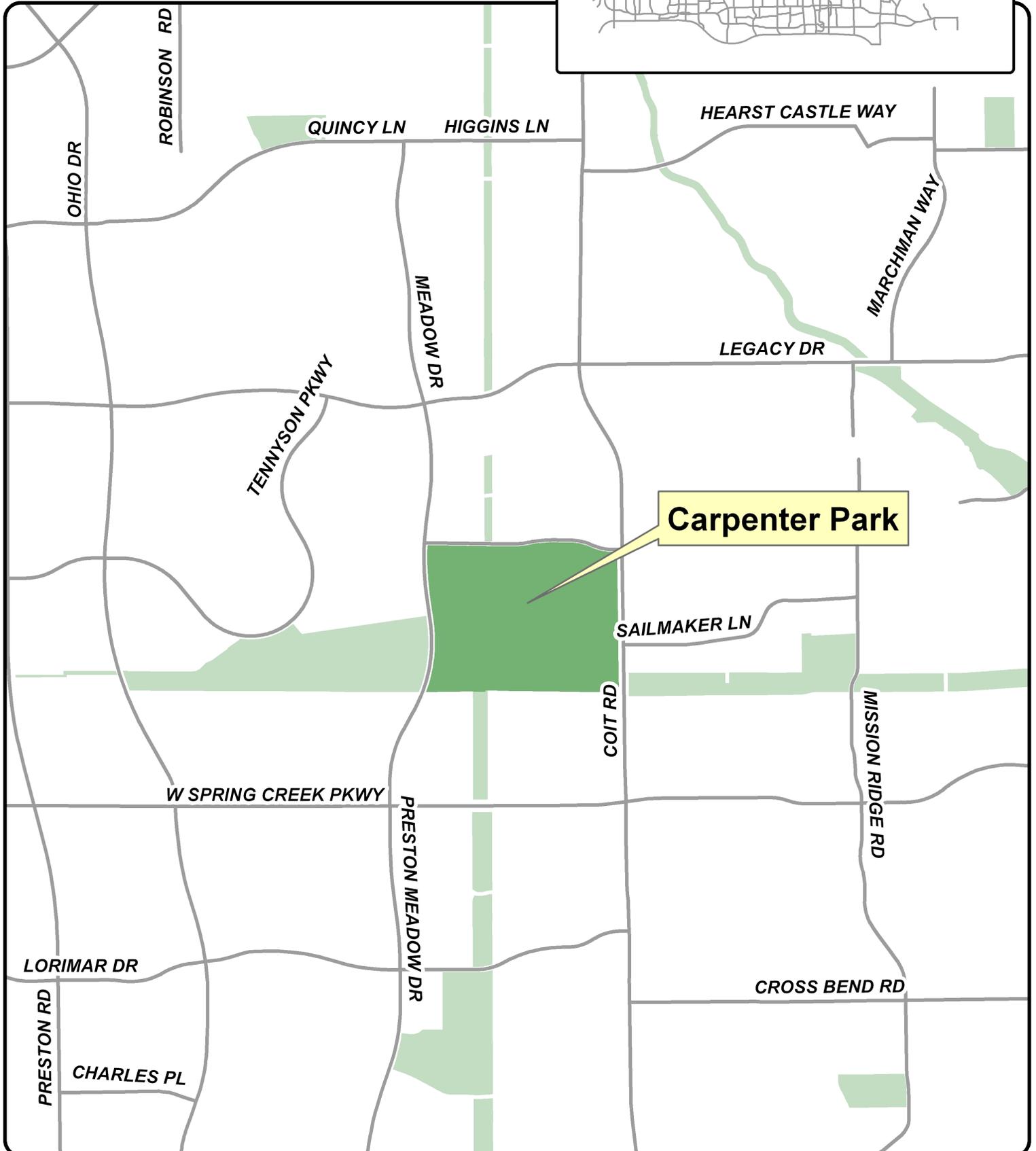
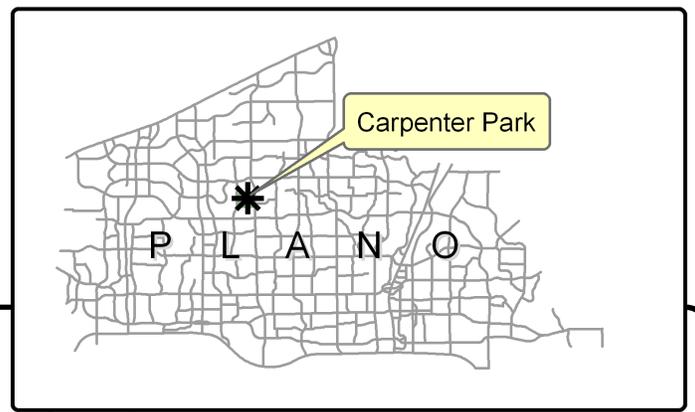
List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Location Map Landscape Architecture Services Agreement	



# Location Map



0 0.25 0.5 Miles



**ATHLETIC FACILITIES IMPROVEMENTS 2012  
CARPENTER PARK (NORTHEAST)**

**PROJECT NO. 6208**

**LANDSCAPE ARCHITECT SERVICES AGREEMENT**

**THIS AGREEMENT** is made and entered by and between the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "City", and **la terra studio, inc.**, a **TEXAS** Corporation, licensed to do business in the State of Texas, hereinafter referred to as "Architect", to be effective from and after the date as provided herein.

**W I T N E S S E T H:**

**WHEREAS**, the City desires to engage the services of the Architect to perform landscape architectural services in connection with the **ATHLETIC FACILITIES IMPROVEMENTS 2012 – CARPENTER PARK (NORTHEAST)** project located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

**WHEREAS**, the Architect desires to render such Architectural services for the City upon the terms and conditions provided herein.

**NOW, THEREFORE**, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

**I. Employment of the Architect**

The City hereby agrees to retain the Architect to perform professional services in connection with the Project. Architect agrees to perform such services in accordance with the terms and conditions of this Agreement.

**II. Scope of Services**

The parties agree that Architect shall perform such services as are set forth and described in Exhibit "A", which is attached hereto and thereby made a part of this Agreement. The parties understand and agree that deviations or modifications in the form of contract modifications orders may be authorized from time to time by the City.

**III. Schedule of Work**

The Architect agrees to commence work immediately upon execution of this Agreement, and to proceed diligently with said work, except for delays beyond the

reasonable control of Architect, to completion as described in the Completion Schedule, attached hereto as Exhibit "B" and thereby made a part of this Agreement.

#### **IV. Compensation and Method of Payment**

The parties agree that Architect shall be compensated for all services provided pursuant to this Agreement in the amount and manner described and set forth in the Payment Schedule attached hereto and incorporated herein as Exhibit "C". The contract amount specified in Exhibit "C" shall not be exceeded without the written permission of the City.

#### **V. Information to be Provided by the City**

The City agrees to furnish, prior to commencement of work, all that information requested by Architect and available in City's files.

#### **VI. Insurance**

Architect agrees to meet all insurance requirements, and to require all consultants who perform work for Architect to meet all insurance requirements, as set forth on Exhibit "D", which is attached hereto and thereby made a part of this Agreement.

Architect agrees to notify the City of any changes in insurance policy coverage, including but not limited to changes in limits and cancellation. The Architect shall notify the City in writing of any changes within forty-eight (48) hours of the change. The Architect's notice shall include a description of the changes and how those changes vary from the insurance requirements of the contract/agreement.

#### **VII. INDEMNITY**

**THE ARCHITECT AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ARCHITECT'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE ARCHITECT, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR**

ENTITIES FOR WHICH THE ARCHITECT IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE ARCHITECTS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

ARCHITECT AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF ARCHITECT'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF ARCHITECT'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. ARCHITECT SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF ARCHITECT FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND ARCHITECT SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

#### **VIII. Independent Contractor**

Architect covenants and agrees that Architect is an independent contractor and not an officer, agent, servant or employee of City; that Architect shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Architect, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Architect.

#### **IX. Assignment and Subletting**

The Architect agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The Architect further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Architect from its full obligations to the City as provided by this Agreement.

## **X. Audits and Records/Prohibited Interest**

The Architect agrees that at any time during normal business hours and as often as City may deem necessary, Architect shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, all for a period of one (1) year from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

The Architect agrees that it is aware of the prohibited interest requirements of the City Charter and Code of Conduct and will abide by the same. Further, a lawful representative of Architect shall execute the affidavit shown in Exhibit "E". Architect understands and agrees that the existence of a prohibited interest during the term of this contract will render the contract voidable.

## **XI. Contract Termination**

The parties agree that City shall have the right to terminate this Agreement with or without cause upon thirty (30) days written notice to Architect. In the event of such termination, Architect shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Architect in connection with this Agreement. Architect shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination.

## **XII. Architect's Opinion of Probable Construction Costs**

The parties recognize and agree that any and all opinions of probable construction costs prepared by Architect in connection with the Project represent the best judgment of Architect as a design professional familiar with the construction industry, but that the Architect does not guarantee that any bids solicited or received in connection with the Project will not vary from opinions prepared by Architect.

## **XIII. Ownership of Documents**

Original drawings and specifications are the property of the Architect; however, the Project is the property of the City and Architect may not use the drawings and specifications therefor for any purpose not relating to the Project without City's consent. City shall be furnished with such reproductions of drawings and specifications as City may reasonably require. Upon completion of the work or any earlier termination of this Agreement under Article XI, Architect will revise drawings to reflect changes made

during construction and he will promptly furnish the City with one (1) complete set of reproducible record prints. Prints shall be furnished, as an additional service, at any other time requested by City. All such reproductions shall be the property of the City who may use them without Architect's permission for any proper purpose including, but not limited to, additions to or completion of the Project. However, use of the documents for other than their intended purpose shall be at the sole risk of the City.

#### **XIV. Complete Contract**

This Agreement, including the Exhibits lettered "A" through "E", constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

#### **XV. Mailing of Notices**

Unless instructed otherwise in writing, Architect agrees that all notices or communications to City permitted or required under this Agreement shall be addressed to City at the following address:

City of Plano  
Parks Department  
P.O. Box 860358  
Plano, TX 75086-0358

City agrees that all notices or communications to Architect permitted or required under this Agreement shall be addressed to Architect at the following address:

la terra studio, inc.  
2109 Commerce Street  
Dallas, TX 75201  
Attn: Kris Brown

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

#### **XVI. Miscellaneous**

##### **A. Paragraph Headings:**

The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision in this Agreement.

B. Contract Interpretation:

Although this Agreement is drafted by the City, should any part be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

C. Venue/Governing Law:

The parties agree that the laws of the State of Texas shall govern this Agreement, and that it is performable in Collin County, Texas. Exclusive venue shall lie in Collin County, Texas.

D. Successors and Assigns:

City and Architect, and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

E. Severability:

In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.

F. Effective Date:

This Agreement shall be effective from and after execution by both parties hereto.

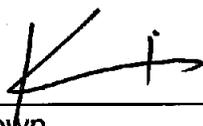
G. Authority to Sign:

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

**SIGNED** on the date indicated below.

**la terra studio, inc.**  
A Texas Corporation

DATE: 2012.01.17

BY:   
Kris Brown  
PRESIDENT

**CITY OF PLANO, TEXAS**

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
Bruce D. Glasscock  
CITY MANAGER

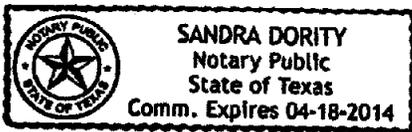
**APPROVED AS TO FORM:**

\_\_\_\_\_  
Diane C. Wetherbee  
CITY ATTORNEY

**ACKNOWLEDGMENTS**

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

This instrument was acknowledged before me on the 17 day of January, 2012, by **KRIS BROWN, PRESIDENT** of **la terra studio, inc.**, a **TEXAS** corporation, licensed to do business in the State of Texas, on behalf of said corporation.



*Sandra DORITY*  
\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, by **BRUCE D. GLASSCOCK, CITY MANAGER** of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

\_\_\_\_\_  
Notary Public, State of Texas



la terra studio

**EXHIBIT A**  
SCOPE OF SERVICES

**ATHLETIC FACILITY IMPROVEMENTS ~2012~  
CARPENTER PARK (NORTHEAST)**

**Section I Basic Services**

la terra studio's Scope of Services is divided into separate phases listed below:

- ~A~ Information Gathering / Coordination
- ~B~ Schematic / Conceptual Design
- ~C~ Design Development / Construction Documents
- ~D~ Procurement - Bid Phase
- ~E~ Construction Phase

**A. Information Gathering / Coordination**

A.1 Data Collection

la terra studio will perform a topographic survey for design encompassing approximately .08 acres.

Services performed by Surveyor Include:

- Location of Visible Improvements such as Buildings, Structures, Patios, Sidewalks, Retaining/Screening Walls, Fences, Planters, etc...
- Show 1' Contours on drawing
- Show flow lines of sanitary and storm manholes/inlets
- Elevations shown on topography are based upon: City of Plano GIS monuments
- Location of Visible Utilities such as Power Poles, Power Lines, Transformers, Meter Boxes, Gas Meters, Phone/Cable Pedestals, Sanitary, Storm, Water, Sprinkler heads, Electric Meters,
- Manhole/Boxes, etc.
- Provide drawing on State Plane Coordinates based on City of Plano GIS monuments

A.2 Data Conversion

la terra studio will convert the collected data into usable base information for use during the following phases.

**B. Schematic / Conceptual Design**

B.1 Schematic Design

la terra studio will present (1) conceptual plan in CAD format for approval and further schematic design.

~Proposed Design Elements~

**RENOVATION ELEMENTS**

- ◆ mobile mini storage pad with screen wall
- ◆ existing pump & service renovation

**NEW ELEMENTS**

- ◆ prefabricated restroom / pump house
- ◆ 700 linear feet of sanitary sewer tie-in
- ◆ trail respite with fix-it station and shade

**C. Design Development / Construction Documents**

C.1 Construction Drawings ~ 60% & 90% Review

la terra studio will begin production of preliminary Construction Drawings & Details.

*\*\*note: Plans & Specifications will be issued as "Not For Regulatory Approval, Permitting, or Construction" for internal City Review*



~Proposed Construction Drawing Elements~

la terra studio

<p><b>Drawing Set (24"x36") to include:</b>                  Coversheet                  Site Locator Map                  Demolition Plan                  Grading Plans                  Site Plans</p>
---

<p>Site Layout Plans                  Dimension Control Plans                  Electrical Plans                  Civil Engineering Plans  <b>DETAILS:</b>                  Paving; Site; Structural; Electrical; Irrigation; Erosion Control</p>
--

**C.2 Technical Specifications ~ 90% Review**

la terra studio will prepare Technical Specifications for use within the construction Project Manual. A standard format will be used in conjunction with any City of Plano standard specifications issued by staff.

*\*\*note: City responsible for providing la terra studio with "front-end" boiler plate contract documents to be included within the Project Manual (see items below)*

**C.3 Construction Drawings ~ 100% Review**

la terra studio will finalize production of Construction Drawings & Details.

*\*\*note: Three (3) sets of Plans & Specifications will be issued as "Not For Regulatory Approval, Permitting, or Construction" for final internal City Review*

**C.4 Project Manual ~ 100% Review**

la terra studio will finalize Technical Specifications and submit (1) unbound Project Manual with the following items:

<ul style="list-style-type: none"> <li>-Coversheet</li> <li>-Table of Contents</li> <li>-Notice to Contractors**</li> <li>-Bid Schedule with Unit Pricing</li> <li>-Construction Agreement**</li> <li>-Performance Bond**</li> <li>-Payment Bond**</li> </ul>
---

<ul style="list-style-type: none"> <li>-Maintenance Bond**</li> <li>-Insurance Requirements**</li> <li>-Certificate of Insurance**</li> <li>-Special Conditions**</li> <li>-TCEQ-TPDES Permit Req.**</li> <li>-Technical Specs</li> <li>-Approved Materials List**</li> </ul>
---

*\*\*note: These items are the responsibility of the City*

**C.5 TDLR Plan Review Submittal**

la terra studio will submit (1) plan set to the Texas Department of Licensing & Regulation for accessibility review as required per TDLR regulations. Upon TDLR plan review completion, la terra studio will address and / or make revisions to plans and specifications as required to meet accessibility standards.

*\*\*note: Fees for TDLR plan review & EABPRJ registration will be paid for by la terra studio. The City is responsible for TDLR site inspection coordination & fees.*

**C.6 Deliverables**

Upon final approval of the Construction Documents, la terra studio will provide the City with one (1) set of signed and sealed plans. Final drawings will also be submitted in the following digital formats: .dxf; .pdf

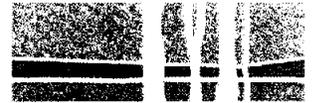
**D. Procurement (bid phase services)**

**D.1 Procurement – Bid Phase**

Upon final approval of the Construction Documents, la terra studio will provide the City assistance in bidding and awarding the Procurement Contract.

This will include the following:

- Furnish signed and sealed plans and specifications for city engineering / procurement services
- Plans & Specs. will be picked-up at the office of la terra studio OR through [www.bidSYNC.com](http://www.bidSYNC.com)
- Answer contractor inquiries during Bid Phase & Issuance of Addendums
- Provide a bid tabulation of all valid bids received
- A summary of the bid analysis will be provided to the City for use in selection and awarding of the Procurement Contract. *\*\*note: Reproduction costs associated during the Bid Phase will be recouped by a non-refundable fee paid for by prospective bidders*



la terra studio

**E. Construction Phase**

E.1 Construction Phase

la terra studio will participate in (4) monthly Project Site Visits\*\*with the Project's contractor to generally review the progress of construction and to see if the work completed is generally consistent with the design intent of Landscape Architect's Construction Documents. Site visits will occur throughout the life of the project, or as deemed necessary by the City or la terra studio. Following each Project Site Visit, a written "Site Observation" report will be submitted to City staff.

*\*\*note: Although Landscape Architect may observe and discuss potential problems, these visits are not construction inspections or a guarantee that there will not be construction deficiencies.*

E.2 Submittals

la terra studio will Review required contractor submittals, such as shop drawings and samples, but only to determine if they conform to the Landscape Architect's visual, technical, and aesthetic design intent.

**Section II Limitations**

Professional Services Limitations

Limitations to professional services not included in basic and/or additional services include, but are not limited to the following:

- |  |
|--|
| <ul style="list-style-type: none"> <li>-perspective illustrations</li> <li>-color rendering</li> <li>-utility mapping</li> <li>-water/sanitary svcs.</li> <li>-FEMA map revisions/verification</li> <li>-environmental assessments</li> <li>-ROW dedication</li> <li>-SWPPP maintenance or inspection</li> <li>-traffic studies</li> <li>-lighting design</li> <li>-wetlands determination &amp; 404 permitting</li> </ul> |
|--|

In addition, limitations listed (above) can be performed as additional services as defined by Section III (b) (below)

**Section III Additional Services**

Additional Services

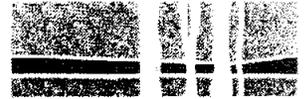
**a. Hourly Rates**

The Landscape Architect will provide Additional Services on an hourly basis with a mutually agreed "not to exceed" total or a mutually agreed upon flat fee in writing. Hourly rates for Additional Services are as follows:

- |  |               |
|--|---------------|
| ~ Principal ~ Registered Landscape Architect | \$115.00/hour |
| ~ Landscape Architect In-training            | \$ 70.00/hour |
| ~ CAD / GIS Tech.                            | \$ 55.00/hour |
| ~ Administrative                             | \$ 40.00/hour |

**b. Services**

Additional services equal any service not listed as a Basic Service



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## EXHIBIT B

Estimated Schedules and Project Budget

### ATHLETIC FACILITY IMPROVEMENTS ~2012~ CARPENTER PARK (NORTHEAST)

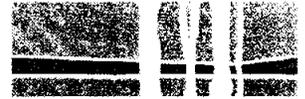
Landscape Architect shall render its services as expeditiously as is consistent with professional skill and care. During the course of the Project, anticipated and unanticipated events may impact any Project schedule. As such *la terra studio* agrees to complete the scope of services A~thru~C (as described in Exhibit "A") within a period of **-150 DAYS-** from the execution of the contract.

As of the date of this agreement, client's project construction budget is approximately:

**\$500,000**

Client agrees to promptly notify Landscape Architect if Client's schedule or budget changes. Client acknowledges that significant changes to the Project or construction schedule or budget or to the Project's scope may require Additional Services of Landscape Architect.

*\*\*Note: The above schedule is for the design team's work effort only and does not include time required for internal review and approval by the City of Plano.*



la terra studio

**EXHIBIT C**

PAYMENT SCHEDULE

**ATHLETIC FACILITY IMPROVEMENTS ~2012~ CARPENTER PARK (NORTHEAST)**

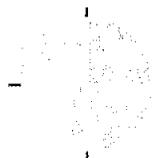
Client agrees to pay Landscape Architect as follows:

<b>-Basic Services-</b> (landscape architectural services)	
<u>Information Gathering (ref. section I-A)</u>	
<b>Phase Total</b>	<u>\$2,500</u>
<u>Schematic / Conceptual Design (ref. section I-B)</u>	
<b>Phase Total</b>	<u>\$4,500</u>
<u>Design Development / Construction Documents (ref. section I-C)</u>	
<b>Phase Total</b>	<u>\$16,250</u>
<u>Procurement Phase Services (ref. section I-D)</u>	
<b>Phase Total</b>	<u>\$4,500</u>
<u>Construction Phase Services (ref. section I-E)</u>	
<b>Phase Total</b>	<u>\$4,500</u>
 <b>TOTAL BASIC SERVICES</b>	 <b><u>\$32,250</u></b>
 <u>Incidental Expenses &amp; Project Allowance (equipment, prints, mileage, postage, courier)</u>	
<b>Subtotal</b>	<b><u>\$3,200</u></b>
<u>TDLR Plan Review</u>	
<b>Subtotal</b>	<b><u>\$800</u></b>
 <b>-Additional Services-</b> (sub-consulting services)	
<u>Engineering (civil, structural, electrical)</u>	<u>\$19,173</u>
<u>RPLS Professional Services (topo. survey for design)</u>	<u>\$3,300</u>
 <b>TOTAL ESTIMATED ADDITIONAL SERVICES</b>	 <b><u>\$22,473</u></b>
 <b>TOTAL Basic; Additional Services; Direct Costs &amp; Fees</b>	 <b><u>\$58,723</u></b>

*Invoices will be submitted monthly based on a percentage of completion*

STATEMENT OF JURISDICTION

The Texas Board of Architectural Examiners (TBAE) has jurisdiction over complaints regarding the professional practices of persons registered as landscape architects in Texas.



**TEXAS Board of  
Architectural Examiners**

Architects Interior Designers Landscape Architects

**TBAE**

P.O. Box 12337  
Austin, TX 78711-2337  
(512) 305 - 9000

<http://www.tbae.state.tx.us/active/home.html>

## EXHIBIT "D"

### LANDSCAPE ARCHITECT

### INSURANCE

**INSURANCE:** (Review this section carefully with your insurance agent prior to bid or proposal submission. See "Insurance Checklist" on the last page or specific coverages applicable to this contract).

**1. General Insurance Requirements:**

- 1.1 The Architect (hereinafter called "Architect") shall not start work under this contract until the Architect has obtained at his own expense all of the insurance called for here under and such insurance has been approved by the City. Approval of insurance required of the Architect will be granted only after submission to the Purchasing Agent of original, signed certificates of insurance or, alternately, at the City's request, certified copies of the required insurance policies.
- 1.2 All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, without first providing the Risk Manager, City of Plano, at least ten (10) days prior written notice."

**NOTE: The words "endeavor to" and "but failure to mail such notice shall impose no obligation to liability of any kind upon the company, its agents or representatives" are to be eliminated from the cancellation provision of standard ACORD certificates of insurance.**

- 1.3 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the Architect from any liability or obligation imposed upon the provisions of the Contract.
- 1.4 The City of Plano (including its elected and appointed officials, agents, volunteers, and employees) is to be named as an additional insured under Architect's General Liability Policy, and the certificate of insurance, or the certified policy, if requested, must so state. Coverage afforded under this paragraph shall be primary as respects the City, its elected and appointed officials, agents and employees.
  - 1.4.1 The following definition of the term "City" applies to all policies issued under the contract:

The City Council of the City of Plano and any affiliated or subsidiary Board, Commission Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board Commission, Authority, Committee, or Independent Agency is either a Body Politic created by the City Council of the City of Plano, or one in which controlling interest is vested in the City of Plano; and City of Plano Constitutional Officers.
- 1.5 The Architect shall provide insurance as specified in the "Insurance Checklist" (Checklist) found on the last page of the bid or proposal form. Full limits of insurance required in the Checklist of this agreement shall be available for claims arising out of this agreement with the City of Plano.

- 1.6 Architect agrees to defend and indemnify the City of Plano, its officers, agents and employees as provided in Paragraph VII. of this contract.
- 1.7 Insurance coverage required in these specifications shall be in force throughout the Contract Term. Should the Architect fail to provide acceptable evidence of current insurance within seven (7) days of written notice at any time during the Contract Term, the City shall have the absolute right to terminate the Contract without any further obligation to the Architect, and the Architect shall be liable to the City for the entire additional cost of procuring performance and the cost of performing the incomplete portion of the Contract at time of termination.
- 1.8 Written requests for consideration of alternate coverages must be received by the City Purchasing Manager at least ten (10) working days prior to the date set for receipt of bids or proposals. If the City denies the request for alternative coverages, the specified coverages will be required to be submitted.
- 1.9 All required insurance coverages must be acquired from insurers authorized to do business in the State of Texas and acceptable to the City. The City prefers that all insurers also have a policyholder's rating of "A-" or better, and a financial size of "Class VI" or better in the latest edition of A.M. Best, or A or better by Standard and Poors, unless the City grants specific approval for an exception.
- 1.10 Any deductibles shall be disclosed in the Checklist and all deductibles will be assumed by the Architect. Architect may be required to provide proof of financial ability to cover deductibles, or may be required to post a bond to cover deductibles.

**2. Architect's Insurance - "Occurrence" Basis:**

- 2.1 The Architect shall purchase the following insurance coverages, including the terms, provisions and limits shown in the Checklist.
  - 2.1.1 Commercial General Liability - Such Commercial General Liability policy shall include any or all of the following as indicated on the Checklist:
    - i. General aggregate limit is to apply per project;
    - ii. Premises/Operations;
    - iii. Actions of Independent Contractors;
    - iv. Contractual Liability including protection for the Architect from claims arising out of liability assumed under this contract;
    - v. Personal Injury Liability including coverage for offenses related to employment;
    - vi. Explosion, Collapse, or Underground (XCU) hazards; if applicable. This coverage required for any and all work involving drilling, excavation, etc.
  - 2.1.2 Business Automobile Liability including coverage for any owned, hired, or non-owned motor vehicles and automobile contractual liability.

- 2.1.3 Workers' Compensation - statutory benefits as required by the State of Texas, or other laws as required by labor union agreements, including Employers' Liability coverage.

**3.0 Consultant's Insurance – Claims Made**

Professional Errors and Omissions

The Consultant shall carry Professional Liability insurance which will pay for injuries arising out of negligent errors or omissions in the rendering, or failure to render professional services under the contract, for the term of the Contract and up to three years after the contract is completed in the amount shown in the Checklist.

Professional Errors and Omissions, Limit \$1,000,000  
per claim and aggregate of \$2,000,000

## LANDSCAPE ARCHITECT

### City of Plano - Insurance Checklist

("X" means the coverage is required.)

#### Coverages Required

#### Limits (Figures Denote Minimums)

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> 1. Workers' Compensation & Employers' Liability | Statutory limits of State of Texas<br>\$100,000 accident \$100,000 disease<br>\$500,000 policy limit disease |
| <input type="checkbox"/> 2. For Future Use  |  |
| <input type="checkbox"/> 3. City Approved Alternative Workers' Comp. Program        | \$150,000 medical, safety program  |
| <input checked="" type="checkbox"/> 4. General Liability                            | Complete entry No. 26<br>Minimum \$500,000 each occurrence<br>\$1,000,000 general aggregate                  |
| <input type="checkbox"/> 5. General aggregate applies per project (CGL)             |  |
| <input checked="" type="checkbox"/> 6. Premises/Operations                          | (Items No. 3-10 & 12 require)  |
| <input checked="" type="checkbox"/> 7. Independent Contractors                      | <u>\$500,000</u> combined single limit<br>for bodily injury and property damage                              |
| <input type="checkbox"/> 8. Products  | damage each occurrence with  |
| <input type="checkbox"/> 9. Completed Operations                                    | \$1,000,000 general aggregate that<br>applies to project under contract                                      |
| <input checked="" type="checkbox"/> 10. Contractual Liability                       |  |
| <input checked="" type="checkbox"/> 11. Personal Injury Liability                   | \$500,000 each offense & aggregate   |
| <input type="checkbox"/> 12. XCU Coverages  |  |
| <input checked="" type="checkbox"/> 13. Automobile Liability                        | \$500,000 Bodily Injury & Property   |
| <input checked="" type="checkbox"/> 14. Owned, Hired & Non-owned                    | Damage each accident   |
| <input type="checkbox"/> 15. Motor Carrier Act Endorsement                          |  |
| <input checked="" type="checkbox"/> 16. Professional Liability                      | \$1,000,000 each claim<br>\$2,000,000 aggregate  |
| <input type="checkbox"/> 17. Garage Liability                                       | \$_____ BI & PD each occurrence  |
| <input type="checkbox"/> 18. Garagekeepers' Legal                                   | \$_____ - Comprehensive  |

\$ \_\_\_\_\_ - Collision

\_\_\_ 19. Owners Protective Liability \$500,000 Combined single limits

X 20. City named as additional insured on General Liability policy.. This coverage is primary to all other coverages the City may possess.

X 21. City provided with Waiver of Subrogation on Workers' Compensation or Alternative program if applicable.

\_\_\_ 22. Ten (10) days notice of cancellation, non-renewal, endorsement required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.

X 23. The City of Plano prefers an A.M. Best's Guide Rating of "A-", "VI" or better or Standard and Poors Rating AA or better; Authorized to do business in the State of Texas (not applicable for workers' compensation assigned through pool or alternative compensation programs).

X 24. The Certificate must state project title and project number.

X 25. Other Insurance Required:

INSURANCE AGENT'S STATEMENT

I have reviewed these requirements with the Architect named below. Additionally:

X 26. The above policy(s) carry the following deductibles: (GL = 0) (E.O = 5,000)

Full limits of coverage available for:  
General Liability \$1m / \$2m Professional Liability \$1m / \$2m  
Automobile Liability \$1m

X 27. Liability policies are (indicate):

OCCURRENCE X GL CLAIMS MADE X E.O

Troy D. Sibelius  
Signature

1-12-12  
Date

TROY D. SIBELIUS  
Insurance Agent (Print)

La Terra Studio, Inc  
Name of Insured

1-12-12  
Date



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/11/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Keller-Lowry Insurance Inc 1777 S Harrison St #700 Denver CO 80210		<b>CONTACT NAME:</b> Teresa Heupel <b>PHONE (A/C No. Ext):</b> (303) 756-9909 <b>E-MAIL ADDRESS:</b> icanhelp@kellerlowry.com	
<b>INSURED</b> LA TERRA STUDIO, INC. 2109 COMMERCE STREET DALLAS TX 75201		<b>INSURER(S) AFFORDING COVERAGE</b> INSURER A: Hartford Accident & Indemnity 22357 INSURER B: Hartford Underwriters Ins Co 30104 INSURER C: Beazley Insurance Company 37540 INSURER D: INSURER E:	

**COVERAGES** CERTIFICATE NUMBER: 11-12 GL, AU, UM, WC, E&O REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR	WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY						EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY			34SBAPD2497	9/29/2011	9/29/2012	DAMAGE TO RENTED PREMISES (Ea. occurrence) \$ 300,000
	CLAIMS MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 10,000
	<input checked="" type="checkbox"/> BLKT ADDITIONAL INSURED						PERSONAL & ADV INJURY \$ 1,000,000
	<input checked="" type="checkbox"/> BLKT WAIVER OF SUBRO	X	X	S300080405			GENERAL AGGREGATE \$ 2,000,000
	GENL AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COM/PROP AGG \$ 2,000,000
	<input checked="" type="checkbox"/> POLICY						\$
A	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Per accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO			34SBAPD2497	9/29/2011	9/29/2012	BODILY INJURY (Per person) \$
	<input checked="" type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS			NO OWNED AUTOS			PROPERTY DAMAGE (Per accident) \$
	<input checked="" type="checkbox"/> UMBRELLA LIAB						EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> EXCESS LIAB						AGGREGATE \$ 1,000,000
	DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			34SBAPD2497	9/29/2011	9/29/2012	\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						<input checked="" type="checkbox"/> WC STATUS: <input type="checkbox"/> TORY LIMITS: <input type="checkbox"/> OTHER:
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N		34WECNZ1027	9/25/2011	9/25/2012	E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below.	Y	N/A	BLKT WAIVER OF SUBRO			E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	PROFESSIONAL LIABILITY			V12134110101	11/13/2011	11/13/2012	PER AGGREGATE \$ 2,000,000
				DED \$ 5,000			PER CLAIM \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Certificate Holder is Additional Insured, with Waiver of Subrogation, for General Liability as required by written contract with Insured subject to the terms and conditions of the policy contract. Waiver of Subrogation applies to Workers Compensation  
 Job Description: ATHLETIC FACILITY IMPROVEMENTS ~2012~ CARPENTER PARK (NORTHEAST)

**CERTIFICATE HOLDER** **CANCELLATION**

City of Plano 1520 Avenue K Plano TX 75074	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE  T Sibelius CIC CRM/TM
--	--

ACORD 25 (2010/05)  
INS025 (2010/01) 01

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## BUSINESS LIABILITY COVERAGE FORM

Form SS 00 08 04 05

© 2005 THE HERSHMAN



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

\*1500234NX10270101 00934

Policy Number: 34 WEC NX1027 Endorsement Number:
Effective Date: 09/25/11 Effective hour is the same as stated on the Information Page of the policy.
Named Insured and Address: LA TERRA STUDIO, INC.

2109 COMMERCE STREET
DALLAS, TX 75201

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

SCHEDULE

1. ( ) Specific Waiver

Name of person or organization:

(X) Blanket Waiver

Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Operations:

ALL TEXAS LOCATION

3. Premium:

The premium charge for this endorsement shall be 2 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advanced Premium:

Countersigned by \_\_\_\_\_ Authorized Representative

Form WC 42 03 04 Printed in U.S.A.
Process Date: 08/16/11

Policy Expiration Date: 09/25/12

**QUICK REFERENCE  
BUSINESS LIABILITY COVERAGE FORM  
READ YOUR POLICY CAREFULLY**

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Form SS 00 08 04 05



## BUSINESS LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

The word "insured" means any person or organization qualifying as such under Section C. - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section G. - Liability And Medical Expenses Definitions.

### A. COVERAGES

#### 1. BUSINESS LIABILITY COVERAGE (BODILY INJURY, PROPERTY DAMAGE, PERSONAL AND ADVERTISING INJURY)

##### Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply.

We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section D. - Liability And Medical Expenses Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

- b. This insurance applies:

- (1) To "bodily injury" and "property damage" only if:

(a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(b) The "bodily injury" or "property damage" occurs during the policy period; and

(c) Prior to the policy period, no insured listed under Paragraph 1. of Section C. - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

(2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section C. - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

## BUSINESS LIABILITY COVERAGE FORM

- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
  - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

### e. Incidental Medical Malpractice

- (1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:
  - (a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and
  - (b) You are not engaged in the business or occupation of providing such services.
- (2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

## 2. MEDICAL EXPENSES

### Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
  - (1) On premises you own or rent;
  - (2) On ways next to premises you own or rent; or
  - (3) Because of your operations;provided that:
  - (1) The accident takes place in the "coverage territory" and during the policy period;
  - (2) The expenses are incurred and reported to us within three years of the date of the accident; and
  - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

## 3. COVERAGE EXTENSION - SUPPLEMENTARY PAYMENTS

- a. We will pay, with respect to any claim or "suit" we investigate or settle, or any "suit" against an insured we defend:
  - (1) All expenses we incur.
  - (2) Up to \$1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.
  - (3) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
  - (4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.
  - (5) All costs taxed against the insured in the "suit".
  - (6) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
  - (7) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.Any amounts paid under (1) through (7) above will not reduce the limits of insurance.

**BUSINESS LIABILITY COVERAGE FORM**

b. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- (1) The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- (2) This insurance applies to such liability assumed by the insured;
- (3) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- (4) The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;
- (5) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- (6) The indemnitee:
  - (a) Agrees in writing to:
    - (i) Cooperate with us in the investigation, settlement or defense of the "suit";
    - (ii) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
    - (iii) Notify any other insurer whose coverage is available to the indemnitee; and
    - (iv) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
  - (b) Provides us with written authorization to:
    - (i) Obtain records and other information related to the "suit"; and
    - (ii) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Notwithstanding the provisions of Paragraph 1.b.(b) of Section B, ... Exclusions, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the Limits of Insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- (1) We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- (2) The conditions set forth above, or the terms of the agreement described in Paragraph (6) above, are no longer met.

**B. EXCLUSIONS**

**1. Applicable To Business Liability Coverage**

This insurance does not apply to:

**a. Expected Or Intended Injury**

- (1) "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property; or
- (2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

**b. Contractual Liability**

- (1) "Bodily injury" or "property damage"; or
- (2) "Personal and advertising injury" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages because of:

- (a) "Bodily injury", "property damage" or "personal and advertising injury" that the insured would have in the absence of the contract or agreement; or

**BUSINESS LIABILITY COVERAGE FORM**

(b) "Bodily injury" or "property damage" assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:

- (i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract", and
- (ii) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

**c. Liquor Liability**

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

**d. Workers' Compensation And Similar Laws**

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

**e. Employer's Liability**

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or

- (b) Performing duties related to the conduct of the insured's business, or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

**f. Pollution**

(1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured. However, this subparagraph does not apply to:

(i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

(ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

**BUSINESS LIABILITY COVERAGE FORM**

- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
  - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
  - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
    - (i) Any insured; or
    - (ii) Any person or organization for whom you may be legally responsible;
  - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
    - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
    - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
    - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
  - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
  - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".
- However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

**BUSINESS LIABILITY COVERAGE FORM**

**g. Aircraft, Auto Or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 51 feet long; and
  - (b) Not being used to carry persons for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment"; or
- (6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

**h. Mobile Equipment**

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

- (2) The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.

**i. War**

"Bodily injury", "property damage" or "personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**j. Professional Services**

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications;
- (3) Supervisory, inspection, architectural or engineering activities;
- (4) Medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
- (5) Any health or therapeutic service treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- (7) Optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

**BUSINESS LIABILITY COVERAGE FORM**

- (8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products;
- (9) Any:
  - (a) Body piercing (not including ear piercing);
  - (b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and
  - (c) Similar services;
- (10) Services in the practice of pharmacy; and
- (11) Computer consulting, design or programming services, including web site design.

Paragraphs (4) and (5) of this exclusion do not apply to the Incidental Medical Malpractice coverage afforded under Paragraph 1.e. in Section A. - Coverages.

**k. Damage To Property**

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate Limit of Insurance applies to Damage To Premises Rented To You as described in Section D. - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to the use of elevators.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

**l. Damage To Your Product**

"Property damage" to "your product" arising out of it or any part of it.

**m. Damage To Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**n. Damage To Impaired Property Or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

**BUSINESS LIABILITY COVERAGE FORM**

**o. Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**p. Personal And Advertising Injury**

"Personal and advertising injury":

- (1) Arising out of oral, written or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of a criminal act committed by or at the direction of the insured;
- (4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement";
- (5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (6) Arising out of the wrong description of the price of goods, products or services;
- (7) Arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

However, this exclusion does not apply to infringement, in your "advertisement", of

- (a) Copyright;
- (b) Slogan, unless the slogan is also a trademark, trade name, service mark or other designation of origin or authenticity; or

(c) Title of any literary or artistic work;

- (8) Arising out of an offense committed by an insured whose business is:

- (a) Advertising, broadcasting, publishing or telecasting;
- (b) Designing or determining content of web sites for others; or
- (c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs a, b, and c, under the definition of "personal and advertising injury" in Section G. – Liability And Medical Expenses Definitions.

For the purposes of this exclusion, placing an "advertisement" for or linking to others on your web site, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting;

- (9) Arising out of an electronic chat room or bulletin board the insured hosts, owns, or over which the insured exercises control;
- (10) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers;
- (11) Arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act;

- (12) Arising out of:

- (a) An "advertisement" for others on your web site;
- (b) Placing a link to a web site of others on your web site;
- (c) Content from a web site of others displayed within a frame or border on your web site. Content includes information, code, sounds, text, graphics or images; or
- (d) Computer code, software or programming used to enable:
  - (i) Your web site; or
  - (ii) The presentation or functionality of an "advertisement" or other content on your web site;

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- (13) Arising out of a violation of any anti-trust law;
- (14) Arising out of the fluctuation in price or value of any stocks, bonds or other securities; or
- (15) Arising out of discrimination or humiliation committed by or at the direction of any "executive officer", director, stockholder, partner or member of the insured.

**q. Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

**r. Employment-Related Practices**

"Bodily injury" or "personal and advertising injury" to:

- (1) A person arising out of any:
  - (a) Refusal to employ that person;
  - (b) Termination of that person's employment; or
  - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to the person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

**s. Asbestos**

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:

(a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";

(b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or

(c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

**t. Violation Of Statutes That Govern E-Mails, Fax, Phone Calls Or Other Methods Of Sending Material Or Information**

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

**Damage To Premises Rented To You - Exception For Damage By Fire, Lightning or Explosion**

Exclusions c. through h. and k. through o. do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with permission of the owner. A separate Limit of Insurance applies to this coverage as described in Section D. - Liability And Medical Expenses Limits Of Insurance.

## BUSINESS LIABILITY COVERAGE FORM

### 2. Applicable To Medical Expenses Coverage

We will not pay expenses for "bodily injury":

#### a. Any Insured

To any insured, except "volunteer workers".

#### b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

#### c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

#### d. Workers' Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

#### e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.

#### f. Products-Completed Operations Hazard

Included with the "products-completed operations hazard".

#### g. Business Liability Exclusions

Excluded under Business Liability Coverage.

## C. WHO IS AN INSURED

### 1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

### 2. Each of the following is also an insured:

#### a. Employees And Volunteer Workers

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

#### (1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph (1)(a) above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or

(d) Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, Paragraph (d) does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

#### (2) "Property damage" to property:

- (a) Owned, occupied or used by,

**BUSINESS LIABILITY COVERAGE FORM**

(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

**b. Real Estate Manager**

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

**c. Temporary Custodians Of Your Property**

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

**d. Legal Representative If You Die**

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

**e. Unnamed Subsidiary**

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

**3. Newly Acquired Or Formed Organization**

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, and

b. Coverage under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

**4. Operator Of Mobile Equipment**

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

**5. Operator of Nonowned Watercraft**

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft, or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

**6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit**

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written

## BUSINESS LIABILITY COVERAGE FORM

contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section F. — Optional Additional Insured Coverages.

### a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Subparagraphs (d) or (f); or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

### b. Lessors Of Equipment

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

**BUSINESS LIABILITY COVERAGE FORM**

- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

**c. Lessors Of Land Or Premises**

- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
  - (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
  - (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

**d. Architects, Engineers Or Surveyors**

- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
  - (a) In connection with your premises; or
  - (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

  - (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
  - (b) Supervisory, inspection, architectural or engineering activities.

**e. Permits Issued By State Or Political Subdivisions**

- (1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
  - (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
  - (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

**f. Any Other Party**

- (1) Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
  - (a) In the performance of your ongoing operations;
  - (b) In connection with your premises owned by or rented to you; or
  - (c) In connection with "your work" and included within the "products-completed operations hazard", but only if
    - (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
    - (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

**BUSINESS LIABILITY COVERAGE FORM**

(a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

(b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section D. -- Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. -- Liability And Medical Expenses General Conditions.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

**D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE**

**1. The Most We Will Pay**

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

**2. Aggregate Limits**

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

**3. Each Occurrence Limit**

Subject to 2.a. or 2.b above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

**4. Personal And Advertising Injury Limit**

Subject to 2.b. above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

**5. Damage To Premises Rented To You Limit**

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

**6. How Limits Apply To Additional Insureds**

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

**BUSINESS LIABILITY COVERAGE FORM**

If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

**E. LIABILITY AND MEDICAL EXPENSES  
GENERAL CONDITIONS**

**1. Bankruptcy**

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

**2. Duties In The Event Of Occurrence, Offense, Claim Or Suit**

**a. Notice Of Occurrence Or Offense**

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

**b. Notice Of Claim**

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

**c. Assistance And Cooperation Of The Insured**

You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

**d. Obligations At The Insured's Own Cost**

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

**e. Additional Insured's Other Insurance**

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

**f. Knowledge Of An Occurrence, Offense, Claim Or Suit**

Paragraphs a. and b. apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

## BUSINESS LIABILITY COVERAGE FORM

This Paragraph f. applies separately to you and any additional insured.

### 3. Financial Responsibility Laws

- a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

### 4. Legal Action Against Us

No person or organization has a right under this Coverage Form:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

### 5. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom a claim is made or "suit" is brought.

### 6. Representations

#### a. When You Accept This Policy

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and

- (3) We have issued this policy in reliance upon your representations.

### b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

### 7. Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

#### a. Primary Insurance

This insurance is primary except when b. below applies. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

#### b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

##### (1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

##### (2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

##### (3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

##### (4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section A. - Coverages.

##### (5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion k. of Section A. - Coverages.

**BUSINESS LIABILITY COVERAGE FORM**

**(6) When You Are Added As An Additional Insured To Other Insurance**

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

**(7) When You Add Others As An Additional Insured To This Insurance**

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

**(a) Primary Insurance When Required By Contract**

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

**(b) Primary And Non-Contributory To Other Insurance When Required By Contract**

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (a) and (b) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

**c. Method Of Sharing**

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**8. Transfer Of Rights Of Recovery Against Others To Us**

**a. Transfer Of Rights Of Recovery**

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

**b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)**

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

**BUSINESS LIABILITY COVERAGE FORM**

**F. OPTIONAL ADDITIONAL INSURED COVERAGES**

If listed or shown as applicable in the Declarations, one or more of the following Optional Additional Insured Coverages also apply. When any of these Optional Additional Insured Coverages apply, Paragraph 6. (Additional Insureds When Required by Written Contract, Written Agreement or Permit) of Section C., Who Is An Insured, does not apply to the person or organization shown in the Declarations. These coverages are subject to the terms and conditions applicable to Business Liability Coverage in this policy, except as provided below:

**1. Additional Insured - Designated Person Or Organization**

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations; or
- b. In connection with your premises owned by or rented to you.

**2. Additional Insured - Managers Or Lessors Of Premises**

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Designated Person Or Organization; but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Declarations.

b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

**3. Additional Insured - Grantor Of Franchise**

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Grantor Of Franchise, but only with respect to their liability as grantor of franchise to you.

**4. Additional Insured - Lessor Of Leased Equipment**

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

**5. Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased**

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Declarations.

b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" that takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

**6. Additional Insured - State Or Political Subdivision - Permits**

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the state or political subdivision shown in the Declarations as an Additional

**BUSINESS LIABILITY COVERAGE FORM**

Insured – State Or Political Subdivision - Permits, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included in the "product-completed operations" hazard.

**7. Additional Insured – Vendors**

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured – Vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- b. The insurance afforded to the vendor is subject to the following additional exclusions:

(1) This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

(b) Any express warranty unauthorised by you;

(c) Any physical or chemical change in the product made intentionally by the vendor;

(d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Subparagraphs (d) or (f); or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

**8. Additional Insured – Controlling Interest**

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Controlling Interest, but only with respect to their liability arising out of:

a. Their financial control of you; or

b. Premises they own, maintain or control while you lease or occupy these premises.

## BUSINESS LIABILITY COVERAGE FORM

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

### 9. Additional Insured – Owners, Lessees Or Contractors – Scheduled Person Or Organization

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owner, Lessees Or Contractors, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(1) In the performance of your ongoing operations for the additional insured(s); or

(2) In connection with "your work" performed for that additional insured and included within the "products-completed operations hazard", but only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

(1) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

(2) Supervisory, inspection, architectural or engineering activities.

### 10. Additional Insured – Co-Owner Of Insured Premises

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or Organization(s) shown in the Declarations as an Additional Insured – Co-Owner Of Insured Premises, but only with respect to their liability as co-owner of the premises shown in the Declarations.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

## G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper;

b. The internet, but only that part of a web site that is about goods, products or services for the purposes of inducing the sale of goods, products or services; or

c. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or

b. An interactive conversation between or among persons through a computer network.

2. "Advertising idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:

- a. Injury;
- b. Sickness; or
- c. Disease

sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. "Coverage territory" means:

**BUSINESS LIABILITY COVERAGE FORM**

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
  - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above;
  - c. All other parts of the world if the injury or damage arises out of:
    - (1) Goods or products made or sold by you in the territory described in a. above;
    - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
    - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication
- provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.
- 7. "Electronic data" means information, facts or programs:
    - a. Stored as or on;
    - b. Created or used on; or
    - c. Transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
  - 8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
  - 9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
  - 10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
  - 11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
    - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;  
if such property can be restored to use by:
    - a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
    - b. Your fulfilling the terms of the contract or agreement.
12. "Insured contract" means:
- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section D. -- Liability and Medical Expenses Limits of Insurance.
  - b. A sidetrack agreement;
  - c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
  - d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
  - e. An elevator maintenance agreement; or
  - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.  
Paragraph f. includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.  
However, Paragraph f. does not include that part of any contract or agreement:

**BUSINESS LIABILITY COVERAGE FORM**

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
- (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.
13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
14. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
  - b. While it is in or on an aircraft, watercraft or "auto"; or
  - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  - b. Vehicles maintained for use solely on or next to premises you own or rent;
  - c. Vehicles that travel on crawler treads;
  - d. Vehicles, whether self-propelled or not, on which are permanently mounted:
- (1) Power cranes, shovels, loaders, diggers or drills; or
  - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c., or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
- (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
- (1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:
    - (a) Snow removal;
    - (b) Road maintenance, but not construction or resurfacing; or
    - (c) Street cleaning;
  - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
  - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a. False arrest, detention or imprisonment;
  - b. Malicious prosecution;

**BUSINESS LIABILITY COVERAGE FORM**

- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that the person occupies, committed by or on behalf of its owner, landlord or lessor;
  - d. Oral, written or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - e. Oral, written or electronic publication of material that violates a person's right of privacy;
  - f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement";
  - g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement"; or
  - h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.
18. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
19. "Products-completed operations hazard":
- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
    - (1) Products that are still in your physical possession; or
    - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed to be completed at the earliest of the following times:
      - (a) When all of the work called for in your contract has been completed.
      - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
      - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
- b. Does not include "bodily injury" or "property damage" arising out of:
  - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
  - (2) The existence of tools, uninstalled equipment or abandoned or unused materials.
20. "Property damage" means:
  - a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
  - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of "occurrence" that caused it.

As used in this definition, "electronic data" is not tangible property.
21. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
  - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
  - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
22. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
23. "Volunteer worker" means a person who:
  - a. Is not your "employee";
- Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
- The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.

**BUSINESS LIABILITY COVERAGE FORM**

- b. Donates his or her work;
  - c. Acts at the direction of and within the scope of duties determined by you; and
  - d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
24. "Your product":
- a. Means:
    - (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
      - (a) You;
      - (b) Others trading under your name; or
      - (c) A person or organization whose business or assets you have acquired; and
    - (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
  - b. Includes:
    - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
    - (2) The providing of or failure to provide warnings or instructions.
25. "Your work":
- a. Means:
    - (1) Work or operations performed by you or on your behalf; and
    - (2) Materials, parts or equipment furnished in connection with such work or operations.
  - b. Includes:
    - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
    - (2) The providing of or failure to provide warnings or instructions.

**EXHIBIT "E"**

**AFFIDAVIT OF NO PROHIBITED INTEREST**

I, the undersigned declare that I am authorized to make this statement on behalf of la terra studio, inc. and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of la terra studio, inc. is employed by the City of Plano or is an elected or appointed official of the City of Plano within the restrictions of the Plano City Charter.

I am aware that Section 11.02 of the City Charter states:

"No officer or employee of the city shall have a financial interest, direct or indirect, in any contract with the city, nor shall be financially interested, directly or indirectly, in the sale to the city of any land, or rights or interest in any land, materials, supplies or service. The above provision shall not apply where the interest is represented by ownership of stock in a corporation involved, provided such stock ownership amounts to less than one (1) per cent of the corporation stock. Any violation of this section shall constitute malfeasance in office, and any officer or employee of the city found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the persons or corporation contracting with the city shall render the contract voidable by the city manager or the city council."

I further understand and acknowledge that a violation of Section 11.02 of the City Charter at anytime during the term of this contract will render the contract voidable by the City.

la terra studio, inc.  
Name of Consultant

By: *Kris*  
Signature

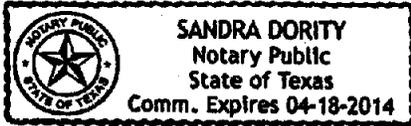
Kris Brown  
Print Name

president  
Title

2012.01.17  
Date

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

SUBSCRIBED AND SWORN TO before me this 17 day of January, 2012.



*Sandra DORITY*  
Notary Public, State of Texas



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular <input type="checkbox"/> Statutory
Council Meeting Date:	2/13/12
Department:	Parks and Recreation
Department Head	Amy Fortenberry
Agenda Coordinator (include phone #): <b>Susan Berger (7255)</b>	

**CAPTION**

Approval of a Landscape Architecture Services Agreement by and between the City of Plano and la terra studio, inc., in the amount of \$177,085 for Improvements to High Point Park and authorizing the City Manager or his designee to execute all necessary documents.

**FINANCIAL SUMMARY**

NOT APPLICABLE       OPERATING EXPENSE       REVENUE       CIP

FISCAL YEAR: <b>2011-12</b>	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	1,000,000	0	<b>1,000,000</b>
Encumbered/Expended Amount	0	0	0	<b>0</b>
This Item	0	-177,085	0	<b>-177,085</b>
BALANCE	0	822,915	0	<b>822,915</b>

**FUND(S):      PARK IMPROVEMENT CIP**

**COMMENTS:** Funds are included in the FY 2011-12 Park Improvement CIP. This item, in the amount of \$177,085, will leave a current year balance of \$822,915 for the Athletic Field Renovations project.

**STRATEGIC PLAN GOAL:** Architectural services for High Point Park North relate to the City's Goal of Great Neighborhoods - 1st Choice to Live.

**SUMMARY OF ITEM**

This agreement provides for the preparation of plans and specifications for renovation and improvements at High Point Park North. The existing improvements were completed in 1985. Improvements include a new irrigation system, the addition of bleacher and dugout shade structures, improvements to pedestrian circulation, replacement of an existing shade structure, renovation of backstops and dugouts, restroom building renovations, sign improvements, and the addition of a second restroom.

The total contract is \$177,085 and includes basic services, reimbursable expense, surveying, irrigation design, and engineering services. The basic services are \$90,750 and additional services including surveying, irrigation design and engineering services are \$86,335.

la terra studio, inc. is on the 2011-12 selected list of qualified consultants for Landscape Architect Services. The fee is similar to other projects of this size and type. The total construction estimate for the project is \$1,800,000.



## CITY OF PLANO COUNCIL AGENDA ITEM

The basic service fee, including reimbursable expenses is 5.04% of the estimated construction budget. The total fee, including surveying, geotechnical services, irrigation design, and engineering services is 9.8% of the estimated construction budget.

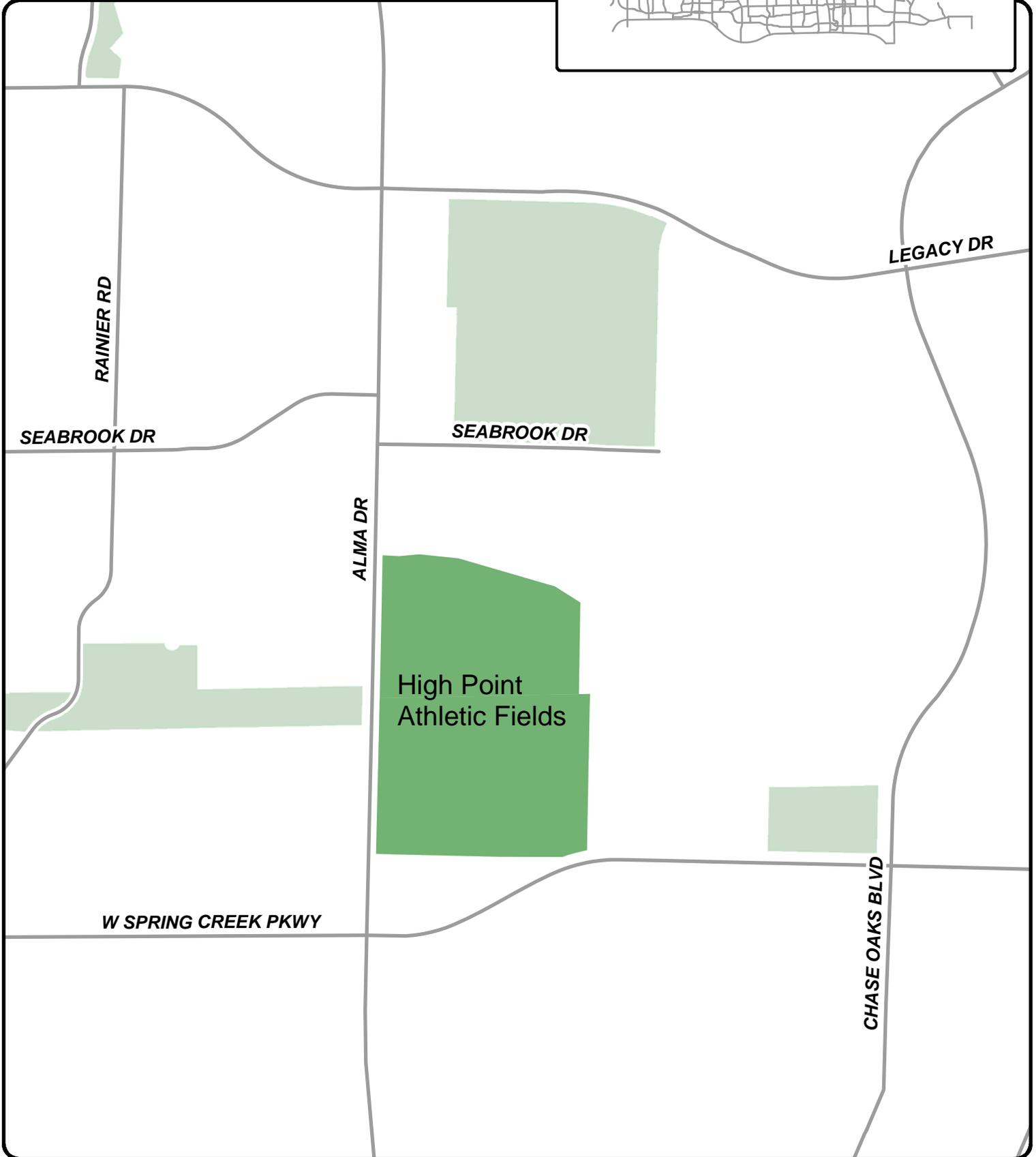
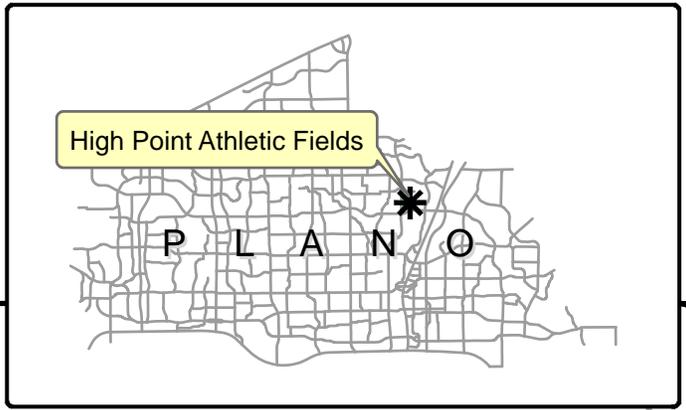
List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Location Map Landscape Architecture Services Agreement	



# Location Map



0 0.1 0.2 Miles



**ATHLETIC FACILITY IMPROVEMENTS 2012  
HIGH POINT PARK (NORTH)**

**PROJECT NO. 6207**

**LANDSCAPE ARCHITECT SERVICES AGREEMENT**

**THIS AGREEMENT** is made and entered by and between the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "City", and **la terra studio, inc.**, a **TEXAS** Corporation, licensed to do business in the State of Texas, hereinafter referred to as "Architect", to be effective from and after the date as provided herein.

**WITNESSETH:**

**WHEREAS**, the City desires to engage the services of the Architect to perform landscape architectural services in connection with the **ATHLETIC FACILITY IMPROVEMENTS 2012 – HIGH POINT PARK (NORTH)** project located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

**WHEREAS**, the Architect desires to render such Architectural services for the City upon the terms and conditions provided herein.

**NOW, THEREFORE**, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

**I. Employment of the Architect**

The City hereby agrees to retain the Architect to perform professional services in connection with the Project. Architect agrees to perform such services in accordance with the terms and conditions of this Agreement.

**II. Scope of Services**

The parties agree that Architect shall perform such services as are set forth and described in Exhibit "A", which is attached hereto and thereby made a part of this Agreement. The parties understand and agree that deviations or modifications in the form of contract modifications orders may be authorized from time to time by the City.

**III. Schedule of Work**

The Architect agrees to commence work immediately upon execution of this Agreement, and to proceed diligently with said work, except for delays beyond the

reasonable control of Architect, to completion as described in the Completion Schedule, attached hereto as Exhibit "B" and thereby made a part of this Agreement.

#### **IV. Compensation and Method of Payment**

The parties agree that Architect shall be compensated for all services provided pursuant to this Agreement in the amount and manner described and set forth in the Payment Schedule attached hereto and incorporated herein as Exhibit "C". The contract amount specified in Exhibit "C" shall not be exceeded without the written permission of the City.

#### **V. Information to be Provided by the City**

The City agrees to furnish, prior to commencement of work, all that information requested by Architect and available in City's files.

#### **VI. Insurance**

Architect agrees to meet all insurance requirements, and to require all consultants who perform work for Architect to meet all insurance requirements, as set forth on Exhibit "D", which is attached hereto and thereby made a part of this Agreement.

Architect agrees to notify the City of any changes in insurance policy coverage, including but not limited to changes in limits and cancellation. The Architect shall notify the City in writing of any changes within forty-eight (48) hours of the change. The Architect's notice shall include a description of the changes and how those changes vary from the insurance requirements of the contract/agreement.

#### **VII. INDEMNITY**

**THE ARCHITECT AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ARCHITECT'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE ARCHITECT, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR**

ENTITIES FOR WHICH THE ARCHITECT IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE ARCHITECTS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

ARCHITECT AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF ARCHITECT'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF ARCHITECT'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. ARCHITECT SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF ARCHITECT FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND ARCHITECT SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

#### **VIII. Independent Contractor**

Architect covenants and agrees that Architect is an independent contractor and not an officer, agent, servant or employee of City; that Architect shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Architect, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Architect.

#### **IX. Assignment and Subletting**

The Architect agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The Architect further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Architect from its full obligations to the City as provided by this Agreement.

## **X. Audits and Records/Prohibited Interest**

The Architect agrees that at any time during normal business hours and as often as City may deem necessary, Architect shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, all for a period of one (1) year from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

The Architect agrees that it is aware of the prohibited interest requirements of the City Charter and Code of Conduct and will abide by the same. Further, a lawful representative of Architect shall execute the affidavit shown in Exhibit "E". Architect understands and agrees that the existence of a prohibited interest during the term of this contract will render the contract voidable.

## **XI. Contract Termination**

The parties agree that City shall have the right to terminate this Agreement with or without cause upon thirty (30) days written notice to Architect. In the event of such termination, Architect shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Architect in connection with this Agreement. Architect shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination.

## **XII. Architect's Opinion of Probable Construction Costs**

The parties recognize and agree that any and all opinions of probable construction costs prepared by Architect in connection with the Project represent the best judgment of Architect as a design professional familiar with the construction industry, but that the Architect does not guarantee that any bids solicited or received in connection with the Project will not vary from opinions prepared by Architect.

## **XIII. Ownership of Documents**

Original drawings and specifications are the property of the Architect; however, the Project is the property of the City and Architect may not use the drawings and specifications therefor for any purpose not relating to the Project without City's consent. City shall be furnished with such reproductions of drawings and specifications as City may reasonably require. Upon completion of the work or any earlier termination of this Agreement under Article XI, Architect will revise drawings to reflect changes made

during construction and he will promptly furnish the City with one (1) complete set of reproducible record prints. Prints shall be furnished, as an additional service, at any other time requested by City. All such reproductions shall be the property of the City who may use them without Architect's permission for any proper purpose including, but not limited to, additions to or completion of the Project. However, use of the documents for other than their intended purpose shall be at the sole risk of the City.

#### **XIV. Complete Contract**

This Agreement, including the Exhibits lettered "A" through "E", constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

#### **XV. Mailing of Notices**

Unless instructed otherwise in writing, Architect agrees that all notices or communications to City permitted or required under this Agreement shall be addressed to City at the following address:

City of Plano  
Parks Department  
P.O. Box 860358  
Plano, TX 75086-0358

City agrees that all notices or communications to Architect permitted or required under this Agreement shall be addressed to Architect at the following address:

la terra studio, inc.  
2109 Commerce Street  
Dallas, TX 75201  
Attn: Kris Brown

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

#### **XVI. Miscellaneous**

##### **A. Paragraph Headings:**

The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision in this Agreement.

B. Contract Interpretation:

Although this Agreement is drafted by the City, should any part be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

C. Venue/Governing Law:

The parties agree that the laws of the State of Texas shall govern this Agreement, and that it is performable in Collin County, Texas. Exclusive venue shall lie in Collin County, Texas.

D. Successors and Assigns:

City and Architect, and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

E. Severability:

In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.

F. Effective Date:

This Agreement shall be effective from and after execution by both parties hereto.

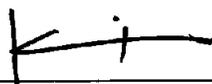
G. Authority to Sign:

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

**SIGNED** on the date indicated below.

**la terra studio, inc.**  
A Texas Corporation

DATE: 2012.01.17

BY:   
Kris Brown  
PRESIDENT

**CITY OF PLANO, TEXAS**

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
Bruce D. Glasscock  
CITY MANAGER

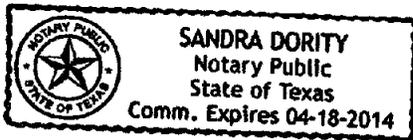
**APPROVED AS TO FORM:**

\_\_\_\_\_  
Diane C. Wetherbee  
CITY ATTORNEY

**ACKNOWLEDGMENTS**

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

This instrument was acknowledged before me on the 17 day of January, 2012, by **KRIS BROWN, PRESIDENT** of **la terra studio, inc.**, a **TEXAS** corporation, licensed to do business in the State of Texas, on behalf of said corporation.



*Sandra DORITY*  
\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, by **BRUCE D. GLASSCOCK, CITY MANAGER** of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

\_\_\_\_\_  
Notary Public, State of Texas



la terra studio

## EXHIBIT A

### SCOPE OF SERVICES

## ATHLETIC FACILITY IMPROVEMENTS ~2012~ HIGH POINT POINT PARK (NORTH)

### Section I Basic Services

la terra studio's Scope of Services is divided into separate phases listed below:

- A- Information Gathering / Coordination
- B- Schematic / Conceptual Design
- C- Design Development / Construction Documents
- D- Procurement - Bid Phase
- E- Construction Phase

#### A. Information Gathering / Coordination

##### A.1 Data Collection

la terra studio will perform a topographic survey for design encompassing approximately 27 acres.

##### Services performed by Surveyor Include:

- Location of Visible Improvements such as Buildings, Structures, Patios, Sidewalks, Retaining/Screening Walls, Fences, Planters, etc...
- Show 1' Contours on drawing
- Show flow lines of sanitary and storm manholes/inlets
- Elevations shown on topography are based upon: City of Plano GIS monuments
- Location of Visible Utilities such as Power Poles, Power Lines, Transformers, Meter Boxes, Gas Meters, Phone/Cable Pedestals, Sanitary, Storm, Water, Sprinkler heads, Electric Meters,
- Manhole/Boxes, etc.
- Provide drawing on State Plane Coordinates based on City of Plano GIS monuments

##### A.2 Data Conversion

la terra studio will convert the collected data into usable base information for use during the following phases.

##### A.3 Geotechnical Investigation

A geotechnical investigation will be performed in order to obtain sub-surface data needed for the design / construction of (1) prefabricated restroom (10) bleacher shade structures (1) additional plaza shade structure.

#### B. Schematic / Conceptual Design

##### B.1 Schematic Design

la terra studio will present (1) conceptual plan in CAD format for approval and further schematic design.

#### ~Proposed Design Elements~

##### **RENOVATION ELEMENTS**

- complete walkway replacement
- complete plaza replacement
- complete backstop renovations
- complete dugout renovation
- ballfield modification / redesign
- addition of scorers tables
- restroom modification to current ADA
- cover existing uncovered restroom structure

##### **NEW ELEMENTS**

- prefabricated restroom & infrastructure
- spectator shade (all fields)
- concrete soccer goal storage area
- concrete bleacher pads
- complete irrigation system, pump & service



la terra studio

**C. Design Development / Construction Documents**

**C.1 Construction Drawings ~ 60% & 90% Review**

la terra studio will begin production of preliminary Construction Drawings & Details.

*\*\*note: One (1) set of Plans & Specifications will be issued as "Not For Regulatory Approval, Permitting, or Construction" for internal City Review*

**- Proposed Construction Drawing Elements -**

<p><b>Drawing Set (24"x36") to include:</b>                  Coversheet                  Site Locator Map                  Demolition Plan                  Grading Plans                  Site Plans</p>	<p>Site Layout Plans                  Dimension Control Plans                  Electrical Plans                  Civil Engineering Plans (including sanitary &amp; erosion control)  <b>DETAILS:</b>                  Paving: Site; Structural; Electrical; Irrigation; Erosion Control</p>
---	---

**C.2 Technical Specifications ~ 90% Review**

la terra studio will prepare Technical Specifications for use within the construction Project Manual. A standard format will be used in conjunction with any City of Plano standard specifications issued by staff.

*\*\*note: City responsible for providing la terra studio with "front-end" boiler plate contract documents to be included within the Project Manual (see items below)*

**C.3 Construction Drawings ~ 100% Review**

la terra studio will finalize production of Construction Drawings & Details.

*\*\*note: Three (3) sets of Plans & Specifications will be issued as "Not For Regulatory Approval, Permitting, or Construction" for final internal City Review*

**C.4 Project Manual ~ 100% Review**

la terra studio will finalize Technical Specifications and submit (1) unbound Project Manual with the following items:

<p>-Coversheet                  -Table of Contents                  -Notice to Contractors**                  -Bid Schedule with Unit Pricing                  -Construction Agreement**                  -Performance Bond**                  -Payment Bond**</p>	<p>-Maintenance Bond**                  -Insurance Requirements**                  -Certificate of Insurance**                  -Special Conditions**                  -TCEQ-TPDES Permit Req.**                  -Technical Specs                  -Approved Materials List**</p>
--	--

*\*\*note: These items are the responsibility of the City*

**C.5 TDLR Plan Review Submittal**

la terra studio will submit (1) plan set to the Texas Department of Licensing & Regulation for accessibility review as required per TDLR regulations. Upon TDLR plan review completion, la terra studio will address and / or make revisions to plans and specifications as required to meet accessibility standards.

*\*\*note: Fees for TDLR plan review & EABPRJ registration will be paid for by la terra studio. The City is responsible for TDLR site inspection coordination & fees.*

**C.6 Deliverables**

Upon final approval of the Construction Documents, la terra studio will provide the City with one (1) set of signed and sealed plans. Final drawings will also be submitted in the following digital formats: .dxf; .pdf

**D. Procurement (bid phase services)**

**D.1 Procurement – Bid Phase**

Upon final approval of the Construction Documents, la terra studio will provide the City assistance in bidding and awarding the Procurement Contract.

This will include the following:

- Furnish signed and sealed plans and specifications for city engineering / procurement services
- Plans & Specs. will be picked-up at the office of la terra studio OR through [www.bidSYNC.com](http://www.bidSYNC.com)



- Attendance at the pre-bid meeting to be held at the City Hall
  - Answer contractor inquiries during Bid Phase & Issuance of Addendums
  - Provide a bid tabulation of all valid bids received
  - A summary of the bid analysis will be provided to the City for use in selection and awarding of the Procurement Contract.
- \*\*note: Reproduction costs associated during the Bid Phase will be recouped by a non-refundable fee paid for by prospective bidders*

**E. Construction Phase**

E.1 Construction Phase

*la terra studio* will participate in (4) monthly Project Site Visits with the Project's contractor to generally review the progress of construction and to see if the work completed is generally consistent with the design intent of Landscape Architect's Construction Documents. Site visits will occur throughout the life of the project, or as deemed necessary by the City or *la terra studio*. Following each Project Site Visit, a written "Site Observation" report will be submitted to City staff.

*\*\*note: Although Landscape Architect may observe and discuss potential problems, these visits are not construction inspections or a guarantee that there will not be construction deficiencies.*

E.2 Submittals

*la terra studio* will Review required contractor submittals, such as shop drawings and samples, but only to determine if they conform to the Landscape Architect's visual, technical, and aesthetic design intent.

**Section II Limitations**

Professional Services Limitations

Limitations to professional services not included in basic and/or additional services include, but are not limited to the following:

- perspective illustrations -color rendering -utility mapping -water/sanitary svcs.
- FEMA map revisions/verification -environmental assessments -ROW dedication
- SWPPP maintenance or inspection -traffic studies -lighting design -wetlands determination & 404 permitting

In addition, limitations listed (above) can be performed as additional services as defined by Section III (b) (below)

**Section III Additional Services**

Additional Services

**a. Hourly Rates**

The Landscape Architect will provide Additional Services on an hourly basis with a mutually agreed "not to exceed" total or a mutually agreed upon flat fee in writing. Hourly rates for Additional Services are as follows:

- Principal - Registered Landscape Architect \$115.00/hour
- Landscape Architect In-training \$ 70.00/hour
- CAD / GIS Tech. \$ 55.00/hour
- Administrative \$ 40.00/hour

**b. Services**

Additional services equal any service not listed as a Basic Service



la terra studio

## EXHIBIT B

Estimated Schedules and Project Budget

### ATHLETIC FACILITY IMPROVEMENTS ~2012~ HIGH POINT POINT PARK (NORTH)

Landscape Architect shall render its services as expeditiously as is consistent with professional skill and care. During the course of the Project, anticipated and unanticipated events may impact any Project schedule. As such *la terra studio* agrees to complete the scope of services A-thru-C (as described in Exhibit "A") within a period of ~150 DAYS~ from the execution of the contract.

As of the date of this agreement, client's project construction budget is approximately:

**\$1,800,000**

Client agrees to promptly notify Landscape Architect if Client's schedule or budget changes. Client acknowledges that significant changes to the Project or construction schedule or budget or to the Project's scope may require Additional Services of Landscape Architect.

*\*\*Note: The above schedule is for the design team's work effort only and does not include time required for internal review and approval by the City of Plano.*



**EXHIBIT C**  
**PAYMENT SCHEDULE**  
**ATHLETIC FACILITY IMPROVEMENTS ~2012~ HIGH POINT POINT PARK (NORTH)**

Client agrees to pay Landscape Architect as follows:

<b>~Basic Services~</b> (landscape architectural services)	
Information Gathering (ref. section I-A)	<u>\$4,500</u>
<b>Phase Total</b>	
Schematic / Conceptual Design (ref. section I-B)	<u>\$18,000</u>
<b>Phase Total</b>	
Design Development / Construction Documents (ref. section I-C)	<u>\$54,250</u>
<b>Phase Total</b>	
Procurement Phase Services (ref. section I-D)	<u>\$6,500</u>
<b>Phase Total</b>	
Construction Phase Services (ref. section I-E)	<u>\$7,500</u>
<b>Phase Total</b>	
<b>TOTAL BASIC SERVICES</b>	<b><u>\$90,750</u></b>
Incidental Expenses & Project Allowance (equipment, prints, mileage, postage, courier)	<u>\$5,500</u>
<b>Subtotal</b>	
TDLR Plan Review	<u>\$1,200</u>
<b>Subtotal</b>	
<b>~Additional Services~</b> (sub-consulting services)	
Engineering (civil, structural, electrical, geotechnical)	<u>\$56,670</u>
RPLS Professional Services (topo. survey for design)	<u>\$10,250</u>
Irrigation Design Services	<u>\$12,715</u>
<b>TOTAL ESTIMATED ADDITIONAL SERVICES</b>	<b><u>\$86,335</u></b>
<b>TOTAL Basic; Additional Services; Direct Costs &amp; Fees</b>	<b><u>\$177,085</u></b>

*Invoices will be submitted monthly based on a percentage of completion*

**STATEMENT OF JURISDICTION**

The Texas Board of Architectural Examiners (TBAE) has jurisdiction over complaints regarding the professional practices of persons registered as landscape architects in Texas.



**TEXAS Board of**  
**Architectural Examiners**  
Architects • Interior Designers • Landscape Architects

**TBAE**  
P.O. Box 12337  
Austin, TX 78711-2337  
(512) 305 - 9000  
<http://www.tbae.state.tx.us/active/home.html>

## EXHIBIT "D"

### LANDSCAPE ARCHITECT

### INSURANCE

**INSURANCE:** (Review this section carefully with your insurance agent prior to bid or proposal submission. See "Insurance Checklist" on the last page or specific coverages applicable to this contract).

#### **1. General Insurance Requirements:**

- 1.1 The Architect (hereinafter called "Architect") shall not start work under this contract until the Architect has obtained at his own expense all of the insurance called for here under and such insurance has been approved by the City. Approval of insurance required of the Architect will be granted only after submission to the Purchasing Agent of original, signed certificates of insurance or, alternately, at the City's request, certified copies of the required insurance policies.
- 1.2 All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, without first providing the Risk Manager, City of Plano, at least ten (10) days prior written notice."

**NOTE: The words "endeavor to" and "but failure to mail such notice shall impose no obligation to liability of any kind upon the company, its agents or representatives" are to be eliminated from the cancellation provision of standard ACORD certificates of insurance.**

- 1.3 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the Architect from any liability or obligation imposed upon the provisions of the Contract.
- 1.4 The City of Plano (including its elected and appointed officials, agents, volunteers, and employees) is to be named as an additional insured under Architect's General Liability Policy, and the certificate of insurance, or the certified policy, if requested, must so state. Coverage afforded under this paragraph shall be primary as respects the City, its elected and appointed officials, agents and employees.
  - 1.4.1 The following definition of the term "City" applies to all policies issued under the contract:

The City Council of the City of Plano and any affiliated or subsidiary Board, Commission Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board Commission, Authority, Committee, or Independent Agency is either a Body Politic created by the City Council of the City of Plano, or one in which controlling interest is vested in the City of Plano; and City of Plano Constitutional Officers.
- 1.5 The Architect shall provide insurance as specified in the "Insurance Checklist" (Checklist) found on the last page of the bid or proposal form. Full limits of insurance required in the Checklist of this agreement shall be available for claims arising out of this agreement with the City of Plano.

- 1.6 Architect agrees to defend and indemnify the City of Plano, its officers, agents and employees as provided in Paragraph VII. of this contract.
- 1.7 Insurance coverage required in these specifications shall be in force throughout the Contract Term. Should the Architect fail to provide acceptable evidence of current insurance within seven (7) days of written notice at any time during the Contract Term, the City shall have the absolute right to terminate the Contract without any further obligation to the Architect, and the Architect shall be liable to the City for the entire additional cost of procuring performance and the cost of performing the incomplete portion of the Contract at time of termination.
- 1.8 Written requests for consideration of alternate coverages must be received by the City Purchasing Manager at least ten (10) working days prior to the date set for receipt of bids or proposals. If the City denies the request for alternative coverages, the specified coverages will be required to be submitted.
- 1.9 All required insurance coverages must be acquired from insurers authorized to do business in the State of Texas and acceptable to the City. The City prefers that all insurers also have a policyholder's rating of "A-" or better, and a financial size of "Class VI" or better in the latest edition of A.M. Best, or A or better by Standard and Poors, unless the City grants specific approval for an exception.
- 1.10 Any deductibles shall be disclosed in the Checklist and all deductibles will be assumed by the Architect. Architect may be required to provide proof of financial ability to cover deductibles, or may be required to post a bond to cover deductibles.

**2. Architect's Insurance - "Occurrence" Basis:**

- 2.1 The Architect shall purchase the following insurance coverages, including the terms, provisions and limits shown in the Checklist.
  - 2.1.1 Commercial General Liability - Such Commercial General Liability policy shall include any or all of the following as indicated on the Checklist:
    - i. General aggregate limit is to apply per project;
    - ii. Premises/Operations;
    - iii. Actions of Independent Contractors;
    - iv. Contractual Liability including protection for the Architect from claims arising out of liability assumed under this contract;
    - v. Personal Injury Liability including coverage for offenses related to employment;
    - vi. Explosion, Collapse, or Underground (XCU) hazards; if applicable. This coverage required for any and all work involving drilling, excavation, etc.
  - 2.1.2 Business Automobile Liability including coverage for any owned, hired, or non-owned motor vehicles and automobile contractual liability.

- 2.1.3 Workers' Compensation - statutory benefits as required by the State of Texas, or other laws as required by labor union agreements, including Employers' Liability coverage.

**3.0 Consultant's Insurance – Claims Made**

Professional Errors and Omissions

The Consultant shall carry Professional Liability insurance which will pay for injuries arising out of negligent errors or omissions in the rendering, or failure to render professional services under the contract, for the term of the Contract and up to three years after the contract is completed in the amount shown in the Checklist.

Professional Errors and Omissions, Limit \$1,000,000  
per claim and aggregate of \$2,000,000

**LANDSCAPE ARCHITECT**  
**City of Plano - Insurance Checklist**

("X" means the coverage is required.)

Coverages Required

Limits (Figures Denote Minimums)

- |   |  |
|---|--|
| <p><input checked="" type="checkbox"/> 1. Workers' Compensation &amp; Employers' Liability</p> <p><input type="checkbox"/> 2. For Future Use</p> <p><input type="checkbox"/> 3. City Approved Alternative Workers' Comp. Program</p> <p><input checked="" type="checkbox"/> 4. General Liability</p> <p><input type="checkbox"/> 5. General aggregate applies per project (CGL)</p> <p><input checked="" type="checkbox"/> 6. Premises/Operations</p> <p><input checked="" type="checkbox"/> 7. Independent Contractors</p> <p><input type="checkbox"/> 8. Products</p> <p><input type="checkbox"/> 9. Completed Operations</p> <p><input checked="" type="checkbox"/> 10. Contractual Liability</p> <p><input checked="" type="checkbox"/> 11. Personal Injury Liability</p> <p><input type="checkbox"/> 12. XCU Coverages</p> <p><input checked="" type="checkbox"/> 13. Automobile Liability</p> <p><input checked="" type="checkbox"/> 14. Owned, Hired &amp; Non-owned</p> <p><input type="checkbox"/> 15. Motor Carrier Act Endorsement</p> <p><input checked="" type="checkbox"/> 16. Professional Liability</p> <p><input type="checkbox"/> 17. Garage Liability</p> <p><input type="checkbox"/> 18. Garagekeepers' Legal</p> | <p>Statutory limits of State of Texas<br/>           \$100,000 accident \$100,000 disease<br/>           \$500,000 policy limit disease</p> <p>\$150,000 medical, safety program</p> <p>Complete entry No. 26<br/>           Minimum \$500,000 each occurrence<br/>           \$1,000,000 general aggregate</p> <p>(Items No. 3-10 &amp; 12 require)</p> <p><u>\$500,000</u> combined single limit<br/>           for bodily injury and property damage<br/>           damage each occurrence with<br/>           \$1,000,000 general aggregate that<br/>           applies to project under contract</p> <p>\$500,000 each offense &amp; aggregate</p> <p>\$500,000 Bodily Injury &amp; Property<br/>           Damage each accident</p> <p>\$1,000,000 each claim<br/>           \$2,000,000 aggregate</p> <p>\$ _____ BI &amp; PD each occurrence</p> <p>\$ _____ - Comprehensive</p> |
|---|--|



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/11/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES LISTED BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Keller-Lowry Insurance Inc 1777 S Harrison St #700 Denver CO 80210		<b>CONTACT NAME:</b> Teresa Reupel <b>PHONE (A/C No., Ext):</b> (303) 756-9909 <b>FAX (A/C No.):</b> (303) 756-8818 <b>E-MAIL ADDRESS:</b> icanhelp@kellerlowry.com	
<b>INSURED</b> LA TERRA STUDIO, INC. 2109 COMMERCE STREET DALLAS TX 75201		<b>INSURER(S) AFFORDING COVERAGE</b>	
		<b>INSURER A:</b> Hartford Accident & Indemnity A	<b>NAIC #:</b> 22357
		<b>INSURER B:</b> Hartford Underwriters Ins Co A	<b>NAIC #:</b> 30104
		<b>INSURER C:</b> Beazley Insurance Company A	<b>NAIC #:</b> 37540
		<b>INSURER D:</b>	
		<b>INSURER E:</b>	

**COVERAGES**      **CERTIFICATE NUMBER:** 11-12 GL, AU, UM, WC, E&O      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR. LTR	TYPE OF INSURANCE	AGRI. SUBRT. INSR. WVD	POLICY NUMBER	POLICY EFF. (MM/DD/YYYY)	POLICY EXP. (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY					
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY		345BAPD2497	9/29/2011	9/29/2012	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$ 300,000 MED EXP (any one person) \$ 10,000
	<input checked="" type="checkbox"/> BLKT ADDITIONAL INSURED					
	<input checked="" type="checkbox"/> BLKT WAIVER OF SUBRO	X X	5500080405			PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPRE AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY					
	<input checked="" type="checkbox"/> ANY AUTO		345BAPD2497	9/29/2011	9/29/2012	COMBINED SINGLE LIMIT (Per occurrence) \$ 1,000,000 BODILY INJURY (Per person) \$
	<input checked="" type="checkbox"/> ALL OWNED AUTOS					BODILY INJURY (Per person) \$
	<input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-SCHEDULED AUTOS		NO OWNED AUTOS		PROPERTY DAMAGE (Per occurrence) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB	<input checked="" type="checkbox"/> OCCUR				EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> EXCESS LIAB	<input checked="" type="checkbox"/> CLAIMS MADE				AGGREGATE \$ 1,000,000
	DED. \$	RETENTION \$	345BAPD2497	9/29/2011	9/29/2012	\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY					
	<input checked="" type="checkbox"/> ANY POLICY (WORKER INCREASE/EMPLOYER'S RESPONSIBILITY EXCLUDED) (Mandatory in NH)	Y/N	345BAPD2497	9/29/2011	9/29/2012	WC STATUTE (Per occurrence) \$ 1,000,000 E1. EACH ACCIDENT \$ 1,000,000 E2. DISEASE - EA EMPLOYEE \$ 1,000,000
	<input checked="" type="checkbox"/> BLKT WAIVER OF SUBRO	Y	345BAPD2497	9/29/2011	9/29/2012	E3. DISEASE - POLICY LIMIT \$ 1,000,000
C	PROFESSIONAL LIABILITY					
			V12134110101	11/13/2011	11/13/2012	PER AGGREGATE \$ 2,000,000 PER CLAIM \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Certificate Holder is Additional Insured, with Waiver of Subrogation, for General Liability as required by written contract with Insured subject to the terms and conditions of the policy contract. Waiver of Subrogation applies to Workers Compensation.  
Job Description: ATHLETIC FACILITY IMPROVEMENTS ~2012~ HIGH POINT POINT PARK (NORTH)

<b>CERTIFICATE HOLDER</b> City of Plano 1520 Avenue K Plano TX 75074	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE T Sibelius CIC CRM/TM
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## BUSINESS LIABILITY COVERAGE FORM

Form SS 00 08 04 05

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**QUICK REFERENCE  
BUSINESS LIABILITY COVERAGE FORM  
READ YOUR POLICY CAREFULLY**

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## BUSINESS LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

The word "insured" means any person or organization qualifying as such under Section C. - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section G. - Liability And Medical Expenses Definitions.

### A. COVERAGES

#### 1. BUSINESS LIABILITY COVERAGE (BODILY INJURY, PROPERTY DAMAGE, PERSONAL AND ADVERTISING INJURY)

##### Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply.

We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section D. - Liability And Medical Expenses Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

##### b. This insurance applies:

- (1) To "bodily injury" and "property damage" only if:

(a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(b) The "bodily injury" or "property damage" occurs during the policy period; and

(c) Prior to the policy period, no insured listed under Paragraph 1. of Section C. - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

(2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section C. - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim.

(1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

**BUSINESS LIABILITY COVERAGE FORM**

- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
  - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".
- e. **Incidental Medical Malpractice**
- (1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:
    - (a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and
    - (b) You are not engaged in the business or occupation of providing such services.
  - (2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

**2. MEDICAL EXPENSES**

**Insuring Agreement**

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
- (1) On premises you own or rent;
  - (2) On ways next to premises you own or rent; or
  - (3) Because of your operations; provided that:
    - (1) The accident takes place in the "coverage territory" and during the policy period;
    - (2) The expenses are incurred and reported to us within three years of the date of the accident; and
    - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:
- (1) First aid administered at the time of an accident;
  - (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
  - (3) Necessary ambulance, hospital, professional nursing and funeral services.

**3. COVERAGE EXTENSION - SUPPLEMENTARY PAYMENTS**

- a. We will pay, with respect to any claim or "suit" we investigate or settle, or any "suit" against an insured we defend:
- (1) All expenses we incur.
  - (2) Up to \$1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.
  - (3) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
  - (4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.
  - (5) All costs taxed against the insured in the "suit".
  - (6) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
  - (7) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.
- Any amounts paid under (1) through (7) above will not reduce the limits of insurance.

## BUSINESS LIABILITY COVERAGE FORM

b. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- (1) The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- (2) This insurance applies to such liability assumed by the insured;
- (3) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- (4) The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;
- (5) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- (6) The indemnitee:
  - (a) Agrees in writing to:
    - (i) Cooperate with us in the investigation, settlement or defense of the "suit";
    - (ii) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
    - (iii) Notify any other insurer whose coverage is available to the indemnitee; and
    - (iv) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
  - (b) Provides us with written authorization to:
    - (i) Obtain records and other information related to the "suit"; and
    - (ii) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Notwithstanding the provisions of Paragraph 1.b.(b) of Section B. – Exclusions, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the Limits of Insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- (1) We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- (2) The conditions set forth above, or the terms of the agreement described in Paragraph (6) above, are no longer met.

## B. EXCLUSIONS

### 1. Applicable To Business Liability Coverage

This insurance does not apply to:

#### a. Expected Or Intended Injury

- (1) "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property; or
- (2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

#### b. Contractual Liability

- (1) "Bodily injury" or "property damage"; or
- (2) "Personal and advertising injury"

for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages because of:

- (a) "Bodily injury", "property damage" or "personal and advertising injury" that the insured would have in the absence of the contract or agreement; or

**BUSINESS LIABILITY COVERAGE FORM**

(b) "Bodily injury" or "property damage" assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:

- (i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract", and
- (ii) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

**c. Liquor Liability**

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

**d. Workers' Compensation And Similar Laws**

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

**e. Employer's Liability**

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business, or

- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

**f. Pollution**

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured. However, this subparagraph does not apply to:

- (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
- (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

**BUSINESS LIABILITY COVERAGE FORM**

- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
  - (i) Any insured; or
  - (ii) Any person or organization for whom you may be legally responsible;
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
  - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or

released as part of the operations being performed by such insured, contractor or subcontractor;

- (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
  - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
  - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
  - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

**BUSINESS LIABILITY COVERAGE FORM**

**g. Aircraft, Auto Or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 51 feet long; and
  - (b) Not being used to carry persons for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment"; or
- (6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

**h. Mobile Equipment**

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

- (2) The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.

**i. War**

"Bodily injury", "property damage" or "personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**j. Professional Services**

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications;
- (3) Supervisory, inspection, architectural or engineering activities;
- (4) Medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
- (5) Any health or therapeutic service treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- (7) Optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

**BUSINESS LIABILITY COVERAGE FORM**

- (8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products;
- (9) Any:
  - (a) Body piercing (not including ear piercing);
  - (b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and
  - (c) Similar services;
- (10) Services in the practice of pharmacy; and
- (11) Computer consulting, design or programming services, including web site design.

Paragraphs (4) and (5) of this exclusion do not apply to the Incidental Medical Malpractice coverage afforded under Paragraph 1.e. in Section A. - Coverages.

**k. Damage To Property**

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate Limit of Insurance applies to Damage To Premises Rented To You as described in Section D. - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to the use of elevators.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

**l. Damage To Your Product**

"Property damage" to "your product" arising out of it or any part of it.

**m. Damage To Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**n. Damage To Impaired Property Or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

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**o. Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**p. Personal And Advertising Injury**

"Personal and advertising injury":

- (1) Arising out of oral, written or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of a criminal act committed by or at the direction of the insured;
- (4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement";
- (5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (6) Arising out of the wrong description of the price of goods, products or services;
- (7) Arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

However, this exclusion does not apply to infringement, in your "advertisement", of

- (a) Copyright;
- (b) Slogan, unless the slogan is also a trademark, trade name, service mark or other designation of origin or authenticity; or

(c) Title of any literary or artistic work;

(8) Arising out of an offense committed by an insured whose business is:

- (a) Advertising, broadcasting, publishing or telecasting;
- (b) Designing or determining content of web sites for others; or
- (c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs a., b. and c. under the definition of "personal and advertising injury" in Section G. - Liability And Medical Expenses Definitions.

For the purposes of this exclusion, placing an "advertisement" for or linking to others on your web site, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting;

- (9) Arising out of an electronic chat room or bulletin board the insured hosts, owns, or over which the insured exercises control;
- (10) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers;
- (11) Arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act;

- (12) Arising out of:
  - (a) An "advertisement" for others on your web site;
  - (b) Placing a link to a web site of others on your web site;
  - (c) Content from a web site of others displayed within a frame or border on your web site. Content includes information, code, sounds, text, graphics or images; or
  - (d) Computer code, software or programming used to enable:
    - (i) Your web site; or
    - (ii) The presentation or functionality of an "advertisement" or other content on your web site;

**BUSINESS LIABILITY COVERAGE FORM**

- (13) Arising out of a violation of any anti-trust law;
- (14) Arising out of the fluctuation in price or value of any stocks, bonds or other securities; or
- (15) Arising out of discrimination or humiliation committed by or at the direction of any "executive officer", director, stockholder, partner or member of the insured.

**q. Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

**r. Employment-Related Practices**

"Bodily injury" or "personal and advertising injury" to:

- (1) A person arising out of any:
  - (a) Refusal to employ that person;
  - (b) Termination of that person's employment; or
  - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to the person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

**s. Asbestos**

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:

(a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";

(b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or

(c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

**t. Violation Of Statutes That Govern E-Mails, Fax, Phone Calls Or Other Methods Of Sending Material Or Information**

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

**Damage To Premises Rented To You - Exception For Damage By Fire, Lightning or Explosion**

Exclusions c. through h. and k. through o. do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with permission of the owner. A separate Limit of Insurance applies to this coverage as described in Section D. - Liability And Medical Expenses Limits Of Insurance.

## BUSINESS LIABILITY COVERAGE FORM

### 2. Applicable To Medical Expenses Coverage

We will not pay expenses for "bodily injury":

- a. **Any Insured**  
To any insured, except "volunteer workers".
- b. **Hired Person**  
To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. **Injury On Normally Occupied Premises**  
To a person injured on that part of premises you own or rent that the person normally occupies.
- d. **Workers' Compensation And Similar Laws**  
To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.
- e. **Athletics Activities**  
To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.
- f. **Products-Completed Operations Hazard**  
Included with the "products-completed operations hazard".
- g. **Business Liability Exclusions**  
Excluded under Business Liability Coverage.

### C. WHO IS AN INSURED

1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

### 2. Each of the following is also an insured:

#### a. Employees And Volunteer Workers

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

#### (1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

- (b) To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph (1)(a) above;

- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or

- (d) Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, Paragraph (d) does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

#### (2) "Property damage" to property:

- (a) Owned, occupied or used by:

**BUSINESS LIABILITY COVERAGE FORM**

(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

**b. Real Estate Manager**

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

**c. Temporary Custodians Of Your Property**

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

**d. Legal Representative If You Die**

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

**e. Unnamed Subsidiary**

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

**3. Newly Acquired Or Formed Organization**

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

b. Coverage under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

**4. Operator Of Mobile Equipment**

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

**5. Operator of Nonowned Watercraft**

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

**6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit**

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written

## BUSINESS LIABILITY COVERAGE FORM

contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section F. – Optional Additional Insured Coverages.

### a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

(1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Subparagraphs (d) or (f); or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

### b. Lessors Of Equipment

(1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

**BUSINESS LIABILITY COVERAGE FORM**

- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

**c. Lessors Of Land Or Premises**

- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
  - (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
  - (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

**d. Architects, Engineers Or Surveyors**

- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
  - (a) In connection with your premises; or
  - (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

  - (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
  - (b) Supervisory, inspection, architectural or engineering activities.

**e. Permits Issued By State Or Political Subdivisions**

- (1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
  - (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
  - (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

**f. Any Other Party**

- (1) Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
  - (a) In the performance of your ongoing operations;
  - (b) In connection with your premises owned by or rented to you; or
  - (c) In connection with "your work" and included within the "products-completed operations hazard", but only if
    - (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
    - (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

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- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

**D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE**

**1. The Most We Will Pay**

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

**2. Aggregate Limits**

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

**3. Each Occurrence Limit**

Subject to 2.a. or 2.b above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

**4. Personal And Advertising Injury Limit**

Subject to 2.b. above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

**5. Damage To Premises Rented To You Limit**

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

**6. How Limits Apply To Additional Insureds**

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

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If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

**E. LIABILITY AND MEDICAL EXPENSES  
GENERAL CONDITIONS**

**1. Bankruptcy**

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

**2. Duties In The Event Of Occurrence, Offense, Claim Or Suit**

**a. Notice Of Occurrence Or Offense**

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

**b. Notice Of Claim**

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

**c. Assistance And Cooperation Of The Insured**

You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

**d. Obligations At The Insured's Own Cost**

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

**e. Additional Insured's Other Insurance**

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

**f. Knowledge Of An Occurrence, Offense, Claim Or Suit**

Paragraphs a. and b. apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

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This Paragraph f. applies separately to you and any additional insured.

### 3. Financial Responsibility Laws

- a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

### 4. Legal Action Against Us

No person or organization has a right under this Coverage Form:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

### 5. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom a claim is made or "suit" is brought.

### 6. Representations

#### a. When You Accept This Policy

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and

- (3) We have issued this policy in reliance upon your representations.

### b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

### 7. Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

#### a. Primary Insurance

This insurance is primary except when b. below applies. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

#### b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

##### (1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work".

##### (2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

##### (3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

##### (4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section A. - Coverages.

##### (5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion k. of Section A. - Coverages.

**(6) When You Are Added As An Additional Insured To Other Insurance**

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

**(7) When You Add Others As An Additional Insured To This Insurance**

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

**(a) Primary Insurance When Required By Contract**

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

**(b) Primary And Non-Contributory To Other Insurance When Required By Contract**

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (a) and (b) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

**BUSINESS LIABILITY COVERAGE FORM**

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

**c. Method Of Sharing**

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**8. Transfer Of Rights Of Recovery Against Others To Us**

**a. Transfer Of Rights Of Recovery**

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

**b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)**

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

**BUSINESS LIABILITY COVERAGE FORM**

**F. OPTIONAL ADDITIONAL INSURED COVERAGES**

If listed or shown as applicable in the Declarations, one or more of the following Optional Additional Insured Coverages also apply. When any of these Optional Additional Insured Coverages apply, Paragraph 6. (Additional Insureds When Required by Written Contract, Written Agreement or Permit) of Section C., Who Is An Insured, does not apply to the person or organization shown in the Declarations. These coverages are subject to the terms and conditions applicable to Business Liability Coverage in this policy, except as provided below:

**1. Additional Insured - Designated Person Or Organization**

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations; or
- b. In connection with your premises owned by or rented to you.

**2. Additional Insured - Managers Or Lessors Of Premises**

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Designated Person Or Organization; but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Declarations.

b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

**3. Additional Insured - Grantor Of Franchise**

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Grantor Of Franchise, but only with respect to their liability as grantor of franchise to you.

**4. Additional Insured - Lessor Of Leased Equipment**

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

**5. Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased**

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Declarations.

b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" that takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

**6. Additional Insured - State Or Political Subdivision - Permits**

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the state or political subdivision shown in the Declarations as an Additional

**BUSINESS LIABILITY COVERAGE FORM**

Insured -- State Or Political Subdivision - Permits, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included in the "product-completed operations" hazard.

**7. Additional Insured -- Vendors**

- a. WHO IS AN INSURED under Section C, is amended to include as an additional insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured - Vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- b. The insurance afforded to the vendor is subject to the following additional exclusions:

- (1) This insurance does not apply to:
  - (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
  - (b) Any express warranty unauthorized by you;
  - (c) Any physical or chemical change in the product made intentionally by the vendor;
  - (d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or

- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

**8. Additional Insured -- Controlling Interest**

WHO IS AN INSURED under Section C, is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Controlling Interest, but only with respect to their liability arising out of:

- a. Their financial control of you; or
- b. Premises they own, maintain or control while you lease or occupy these premises.

**EXHIBIT "E"**

**AFFIDAVIT OF NO PROHIBITED INTEREST**

I, the undersigned declare that I am authorized to make this statement on behalf of la terra studio, inc. and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of la terra studio, inc. is employed by the City of Plano or is an elected or appointed official of the City of Plano within the restrictions of the Plano City Charter.

I am aware that Section 11.02 of the City Charter states:

"No officer or employee of the city shall have a financial interest, direct or indirect, in any contract with the city, nor shall be financially interested, directly or indirectly, in the sale to the city of any land, or rights or interest in any land, materials, supplies or service. The above provision shall not apply where the interest is represented by ownership of stock in a corporation involved, provided such stock ownership amounts to less than one (1) per cent of the corporation stock. Any violation of this section shall constitute malfeasance in office, and any officer or employee of the city found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the persons or corporation contracting with the city shall render the contract voidable by the city manager or the city council."

I further understand and acknowledge that a violation of Section 11.02 of the City Charter at anytime during the term of this contract will render the contract voidable by the City.

la terra studio, inc.  
Name of Consultant

By:   
Signature

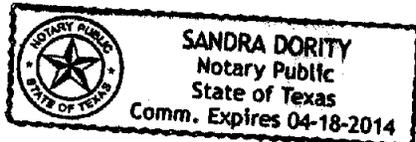
Kris Brown  
Print Name

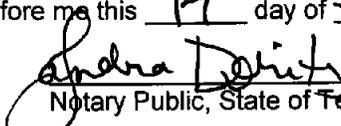
president  
Title

2012.01.17  
Date

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

SUBSCRIBED AND SWORN TO before me this 17 day of January, 2012.



  
Notary Public, State of Texas



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		2/13/2012			
Department:		Purchasing			
Department Head		Diane Palmer-Boeck			
Agenda Coordinator (include phone #): <b>Connie Robertson x 7134</b>					
<b>CAPTION</b>					
To approve and authorize Contract Modification No. 5 to increase the contract cap in the amount \$2,414,290 for the purchase of water meters and installation services from HD Supply Waterworks Ltd to be utilized by Public Works, Customer & Utility Services, and Warehouse, and authorizing the City Manager to execute all necessary documents (2007-223-B).					
<b>FINANCIAL SUMMARY</b>					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	<b>2011-12 through 2015-16 (9 months)</b>	Prior Year (CIP Only)	Current Year	Future Years	<b>TOTALS</b>
Budget		0	0	0	<b>0</b>
Encumbered/Expended Amount		0	0	0	<b>0</b>
This Item		0	2,414,290	0	<b>2,414,290</b>
BALANCE		0	2,414,290	0	<b>2,414,290</b>
<b>FUND(s): WATER &amp; SEWER FUND, WAREHOUSE FUND</b>					
<p><b>COMMENTS:</b> This contract modification, in the amount of \$2,414,290, approves additional parts and installation services over the life of the contract. Including this item, modifications to the original contract total \$4,489,290, and the total HD Supply contract for the Fixed Network Project is now \$23,211,766. Expenditures will be made from the various cost centers (Warehouse, Customer &amp; Utility Billing Field Services, and Meters) within the annually approved budget appropriations for the remainder of the contract period.</p> <p>STRATEGIC PLAN GOAL: Improvements to the automated meter reading system and contract modifications are related to the City's goal of Financially Strong City with Service Excellence.</p>					
<b>SUMMARY OF ITEM</b>					
Staff recommends an increase in the contract cap in the amount of \$2,414,290 to HD Supply Waterworks Ltd, to correct an administrative error in the initial award for funding for new construction and replacement meters, and for additional contracted labor expenses for the installation of meters. (2007-223-B)					
List of Supporting Documents: Department Memo			Other Departments, Boards, Commissions or Agencies		



**Date:** January 31, 2012  
**To:** Glenna Hayes, Contract Specialist  
**From:** Gentry Strickland, Utility Operations Superintendent  
**Subject:** Contract Modification #5: 2007-223-B FNP (Water Meters)

This memo is to request an increase in the total project CAP for the above referenced contract from \$20,797,476 to \$23,211,766, an increase of \$2,414,290 (11.6%).

The increase is necessary to:

- Cover the contracted labor cost of installing meters originally slated to be installed by City of Plano Utility Operations Department personnel.
- Correct an administrative error in the initial award, indicating funding for both new construction and replacement meters. These meters were included in the original bid specification and were referenced in the original award recommendation memo. The annual cost of these meters is estimated at \$300,000 and will be purchased by both the City's Warehouse and Public Works Department.

**Note:** At no point during the life of the contract have the Departments exceeded the amount awarded by Council. Total awarded to date by Council: \$20,797,476. Total spent to date by all Departments: \$14,611,766.

The contract modification is detailed below:

TOTAL COUNCIL APPROVED – 2007-223-B	20,797,476
Total Spent to Date by all Depts.	-14,611,766
Total Remaining Funds	6,185,710

**Requested Modification to Complete Project and Fund Future Meters**

Customer and Utility Services

Project Completion -8,000,000

Public Works

FY 2011-12 -200,000

FY 2012-13 -200,000

Warehouse

FY 2011-12 -100,000

FY 2012-13 -100,000

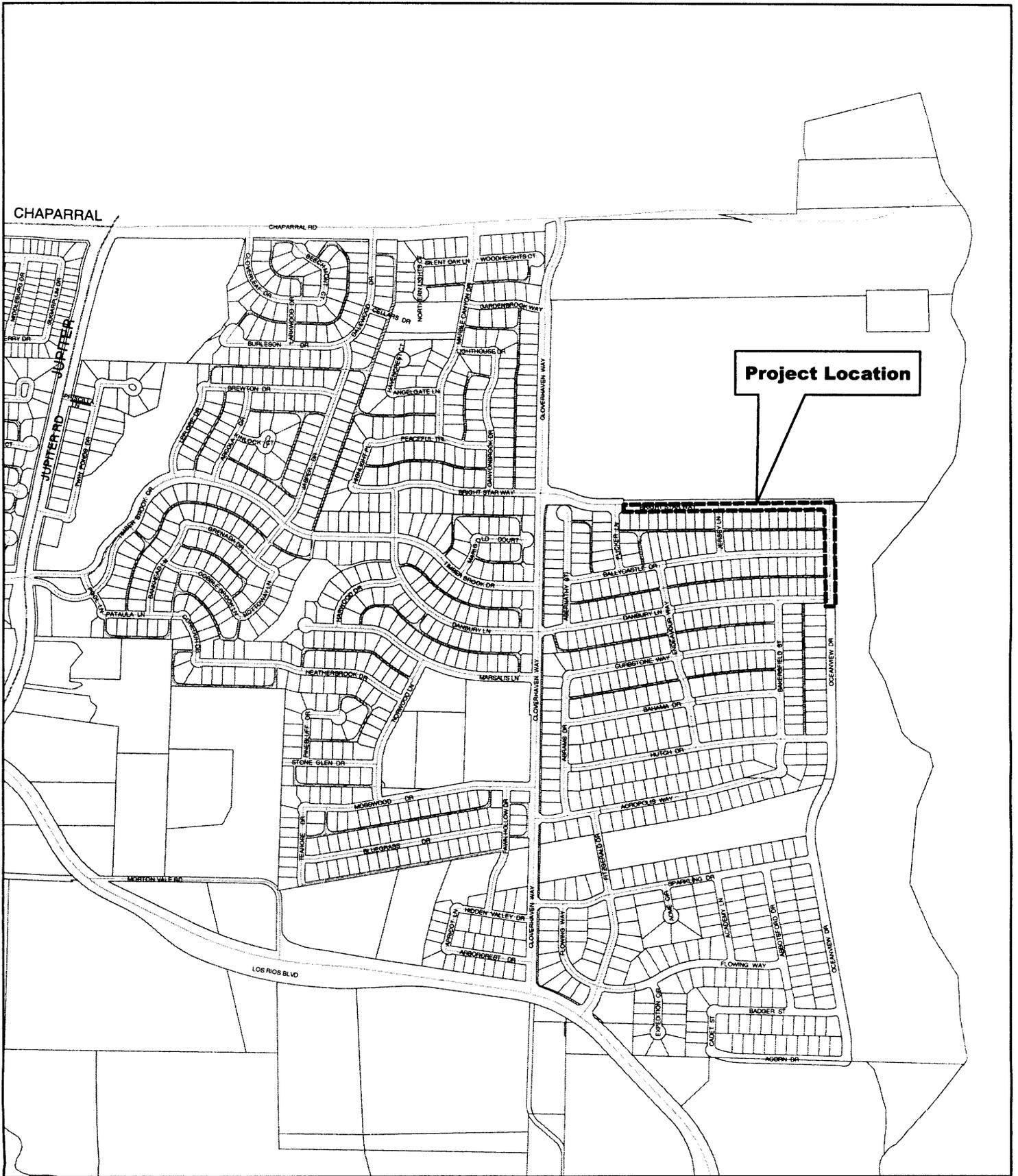
**Total Contract Modification #5 Request -2,414,290**



## CITY OF PLANO COUNCIL AGENDA ITEM

<b>CITY SECRETARY'S USE ONLY</b>					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		2/13/2012			
Department:	Public Works & Engineering				
Department Head	Gerald Cosgrove				
Agenda Coordinator (include phone #):		Irene Pegues (X-7152)		PROJ #5602-2	
<b>CAPTION</b>					
Approving and authorizing reimbursement to TOG Development I, LLC for oversize participation for public improvements associated with the construction of Bright Star Way and a portion of Oceanview Drive in the amount of \$131,836.66, and to TOG Development II, LLC for oversize improvements associated with the construction of a portion of Oceanview Drive in the amount of \$4,811.52.					
<b>FINANCIAL SUMMARY</b>					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP					
FISCAL YEAR:	<b>2011-2012</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget		324,703	246,297	100,000	<b>671,000</b>
Encumbered/Expended Amount		-324,703	0	0	<b>-324,703</b>
This Item		0	-136,648	0	<b>-136,648</b>
<b>BALANCE</b>		<b>0</b>	<b>109,649</b>	<b>100,000</b>	<b>209,649</b>
<b>FUND(S): STREET IMPROVEMENT CIP</b>					
<b>COMMENTS:</b> Funds are included in the FY 2011-12 Street Improvement CIP. This item, in the amount of \$136,648, will leave a current year balance of \$109,649 for Streets Oversized Reimbursement.					
<b>STRATEGIC PLAN GOAL:</b> Oversized participation for public improvements associated with construction relates to the City's Goal of Financially Strong City with Service Excellence.					
<b>SUMMARY OF ITEM</b>					
In accordance with the Subdivision Ordinance and a Subdivision Improvement Agreement, reimbursement of \$131,836.66 to TOG Development I, LLC for oversize participation for public improvements associated with the construction of Bright Star Way and a portion of Oceanview Drive, and to TOG Development II, LLC for oversize improvements associated with the construction of a portion of Oceanview Drive in the amount of \$4,811.52. The construction was inspected and found to be in conformance with the executed Agreement. Staff recommends the City Council authorize payment for the oversize participation.					
List of Supporting Documents: Letter dated 9/29/11 from Director of Public Works Letter dated 1/26/12 from Engineering Manager Exhibits A-1 & A-2 Location Map			Other Departments, Boards, Commissions or Agencies N/A		

# Oversized Participation for Public Improvements Project # 5602-2



**Project Location**



**Location Map**



September 29, 2011

TOG Development I, LLC  
15455 Dallas Parkway, Suite 1000  
Addison, Texas 75001

**Re: Trails of Glenwood, Phase 2 - Project No. 5602-2  
Acropolis Drive to Bright Star Way East of Flicker & Endeavour**

Gentlemen:

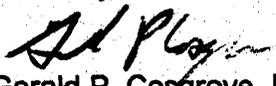
A final inspection of the water, sanitary sewer, paving, and drainage improvements, as shown on plans prepared by JACOBS, has been made by the City of Plano. These improvements were found to be satisfactory and in accordance with the City of Plano specifications.

Maintenance Bonds have been received from KCK Utility Construction, Inc., and LH Lacy Company, Ltd. Therefore, the improvements noted above are accepted by the City of Plano subject to the one-year maintenance requirements.

The developer shall provide total maintenance of landscaping placed in the City right of way for a minimum of two (2) years. Landscaping escrow received for work to be done in the autumn of 2011.

Building Permits are released by this department subject to approval by the Building Inspection Department.

Sincerely,

  
Gerald P. Cosgrove, P.E.  
Director of Public Works  
Is

xc: Building Inspection - Gary Miles, Anthony Han, Charles Hart, Cliff Bormann  
Planning - Salena Lewis, Krista Conn  
Public Works - Dennis Maloy, Dale Pettit  
Utility Operations - David Ratcliff  
Parks - Jim Fox  
Verizon  
Southwestern Bell  
JACOBS  
KCK Utility Construction, Inc.  
LH Lacy Company Ltd.

Phil Dyer Mayor Pat Miner Mayor Pro Tem Lissa Smith Deputy Mayor Pro Tem Ben Harris Place 2 André Davidson Place 3 Jim Duggan Place 5 Patrick Gallagher Place 7 Lee Dunlap Place 8 Bruce D. Glasscock City Manager

# **MEMORANDUM**

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**Date:** January 26, 2012  
**To:** Melody Morgan, CIP Budget Coordinator  
**From:** Michael A. Martin, Engineering Manager *MM*  
**Subject:** Trails of Glenwood, Phase II  
Project No. 5602-2

We have now accepted the improvements in Trails of Glenwood, Phase II. In accordance with our Subdivision Improvement Agreement dated January 14, 2011, reimbursement for oversize improvements is due to TOG Development I, LLC, and TOG Development II, LLC.

Due to TOG Development I, LLC	\$131,836.66
Due to TOG Development II, LLC	4,811.52
Total City Participation	<u>\$136,648.18</u>

MAM/eh

xc: Gerald Cosgrove  
Ricky Lindley

## EXHIBIT "A-1"

PROJECT NAME:	The Trails of Glenwood, Ph 2B	NET ACRES:		NO. OF LOTS:	72
CITY:	Plano, Texas	GROSS ACRES:		CREATED BY:	JMS
JOB NUMBER:	WFXK1701	CREATED:	24-Nov-10	CHECKED BY:	
FILE NAME:	TOG I_SIA_Cost_11-24-10	PRINTED:	03-Feb-12	REVISED BY:	

**Owner / Developer : TOG DEVELOPMENT I, LLC**

<b>BRIGHT STAR WAY</b>				
DESCRIPTION	UNIT	APPROXIMATE QUANTITY	UNIT PRICE	TOTAL AMOUNT
18" R.C.P.	LF	112	\$26.00	\$2,912.00
21" R.C.P.	LF	8	\$30.00	\$240.00
24" R.C.P.	LF	236	\$33.00	\$7,788.00
12' CURB INLET	EA	1	\$2,955.00	\$2,955.00
14' CURB INLET	EA	1	\$3,415.00	\$3,415.00
INLET PROTECTION	EA	2	\$85.00	\$170.00
24" TYPE "B" HEADWALL	EA	0.5	\$1,355.00	\$677.50
2' THICK TYPE A DRY ROCK RIP-RAP	SY	3.5	\$70.00	\$245.00
TRENCH SAFETY	LF	356	\$0.05	\$17.80
8" P.V.C. WATERLINE	LF	23	\$18.25	\$419.75
8" GATE VALVE & BOX	EA	1	\$920.00	\$920.00
5" 3,600 psi REINF. CONCRETE STREET PVMT	SY	3,944	\$16.45	\$64,870.58
6" STREET SUBGRADE PREPARATION	SY	4,259	\$1.39	\$5,920.01
HYDRATED LIME (27#/SY)	TON	58	\$156.09	\$8,975.18
REMOVE BARRICADE	EA	0.5	\$174.96	\$87.48
PAVEMENT PAVERS IN MEDIAN	SF	154	\$8.67	\$1,335.18
BARRIER FREE RAMP	EA	1	\$772.72	\$772.72
LANDSCAPE MAINTENANCE RAMP	EA	1	\$562.21	\$562.21
4" STRIPING	LF	1,305	\$2.04	\$2,662.20
2" CONDUIT SCHEDULE 40	LF	45	\$8.50	\$382.50
STREET LIGHTS	EA	1	\$2,600.00	\$2,600.00
INSPECTION FEE	PERCENTAGE	4.0%	\$107,928.10	\$4,317.12
ENGINEERING AND CONSTRUCTION STAKING	PERCENTAGE	6.0%	\$107,928.10	\$6,475.69
<b>TOTAL</b>				<b>\$118,720.91</b>

## EXHIBIT "A-1"

PROJECT NAME:	The Trails of Glenwood, Ph 2B	NET ACRES:		NO. OF LOTS:	72
CITY:	Plano, Texas	GROSS ACRES:		CREATED BY:	JMS
JOB NUMBER:	WFXK1701	CREATED:	24-Nov-10	CHECKED BY:	
FILE NAME:	TOG I_SIA_Cost_11-24-10	PRINTED:	03-Feb-12	REVISED BY:	

<b>OCEANVIEW DRIVE</b>				
DESCRIPTION	UNIT	APPROXIMATE QUANTITY	UNIT PRICE	TOTAL AMOUNT
18" R.C.P.	LF	20	\$26.00	\$520.00
48" R.C.P.	LF	10	\$90.00	\$900.00
TRENCH SAFETY	LF	30	\$0.05	\$1.50
5" 3,600 psi REINF. CONCRETE STREET PVMNT	SY	520	\$16.45	\$8,558.45
6" STREET SUBGRADE PREPARATION	SY	548	\$1.39	\$762.25
HYDRATED LIME (27#/SY)	TON	8	\$156.09	\$1,181.22
INSPECTION FEE	PERCENTAGE	4.0%	\$11,923.41	\$476.94
ENGINEERING AND CONSTRUCTION STAKING	PERCENTAGE	6.0%	\$11,923.41	\$715.40
<b>TOTAL</b>				<b>\$13,115.75</b>

### SUMMARY

BRIGHT STAR WAY	<b>\$118,720.91</b>
OCEANVIEW DRIVE	<b>\$13,115.75</b>

**TOTAL COSTS: \$131,836.66**

## EXHIBIT "A-2"

PROJECT NAME:	The Trails of Glenwood, Ph 2A	NET ACRES:		NO. OF LOTS:	151
CITY:	Plano, Texas	GROSS ACRES:		CREATED BY:	JMS
JOB NUMBER:	WFXK1701	CREATED:	24-Nov-10	CHECKED BY:	
FILE NAME:	TOG II_SIA_Cost_11-24-10	PRINTED:	03-Feb-12	REVISED BY:	

**Owner / Developer : TOG DEVELOPMENT II, LLC**

<b>OCEANVIEW DRIVE</b>				
DESCRIPTION	UNIT	APPROXIMATE QUANTITY	UNIT PRICE	TOTAL AMOUNT
36" R.C.P.	LF	10	\$55.00	\$550.00
5" 3,600 psi REINF. CONCRETE STREET PVMT	SY	184	\$16.45	\$3,032.14
6" STREET SUBGRADE PREPARATION	SY	194	\$1.39	\$270.11
HYDRATED LIME (27#/SY)	TON	3	\$156.09	\$421.86
PAVEMENT HEADER	LF	10	\$10.00	\$100.00
INSPECTION FEE	PERCENTAGE	4.0%	\$4,374.11	\$174.96
ENGINEERING AND CONSTRUCTION STAKING	PERCENTAGE	6.0%	\$4,374.11	\$262.45
<b>TOTAL</b>				<b>\$4,811.52</b>

**SUMMARY**

OCEANVIEW DRIVE	<b>\$4,811.52</b>
<b>TOTAL COSTS:</b>	<b>\$4,811.52</b>



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		February 13, 2012		
Department:		Public Information		
Department Head		Dana Conklin - 7321		
Agenda Coordinator (include phone #): <b>Kimberly Simmons -7307</b>				
<b>CAPTION</b>				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a corporate sponsorship agreement by and between Texas Health Presbyterian Hospital Plano and the City of Plano; approving its execution by the City Manager or his designee; and providing an effective date.				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	<b>2011-12, 2012-13, 2013-14, 2014-15, &amp; 2015-16</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>
		<b>TOTALS</b>		
Budget	0	0	0	<b>0</b>
Encumbered/Expended Amount	0	0	0	<b>0</b>
This Item	0	62,926	640,000	<b>702,926</b>
<b>BALANCE</b>	<b>0</b>	<b>62,926</b>	<b>640,000</b>	<b>702,926</b>
<b>FUND(S):     GENERAL FUND</b>				
<p><b>COMMENTS:</b> Approval of this item will result in annual revenue from a Corporate Sponsorship Agreement with Texas Health Presbyterian Hospital Plano. The Sponsorship Agreement stipulates revenue to be received in the amount of \$200,000 per year for a period of 5 years. However, in the start-up FY 2011-12, the City will receive a net revenue amount of \$62,926. This amount is net after the 20% commission and various start-up supply costs (i.e. signage, ribbons, decals) have been deducted from the initial \$200,000. Thereafter, the annual revenue amount to be received is \$160,000 annually for 4 years for a combined total of \$640,000. This total amount is the net amount after the 20% commission has been deducted for each of the 4 years.</p> <p><b>STRATEGIC PLAN GOAL:</b> Providing a Corporate Sponsorship with Texas Health Presbyterian Hospital of Plano relates to the City's Goal of a Financially Strong City with Service Excellence.</p>				
<b>SUMMARY OF ITEM</b>				
This establishes a five year sponsorship agreement under the Plano Partners program with Texas Health Presbyterian Hospital Plano.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Corporate Sponsorship Agreement				



**Date:** January 30, 2012  
**To:** Bruce D. Glasscock, City Manager  
**From:** Dana Conklin, Director of Public Information  
**Through:** Mark Israelson, Director of Policy and Government Relations  
**Subject: Plano Partners Agreement with Texas Health Presbyterian of Plano**

The first Plano Partners agreement has been completed and we are pleased that our first Partner will be Texas Health Presbyterian of Plano (THP). As the first result of the 2010 Management Preparation Program project recommendation, this agreement was generated through CSL Marketing Group after they were contacted by Texas Health Presbyterian in the summer of 2011. Completion of this agreement has involved several departments and the City's bond counsel. Their participation has been accommodating and appreciated in reaching this milestone.

#### Term

- Five-years for \$1,000,000
- Five annual installments of \$200,000 each year to 2016
- Category exclusivity for health care provider businesses

#### Recognition

- websites and social media sites by both partners
- City will also recognize this and other partners through the Plano Television Network

#### Texas Health Presbyterian of Plano Opportunities

- Opportunity to provide periodic health screenings at four recreation centers
- At discretion/expense of THP with scheduling and insurance coverage required
- Collateral material may be made available at the recreation centers after approval by the City

#### The City of Plano Obligations

(sign examples are attached)

- Purchase, install and maintain signage recognizing all Plano Partners - 14 in publicly visible locations
  - five libraries
  - four recreation centers
  - four parks
  - Amphitheater at Oak Point Park.
- Indoor signs - four recreation centers (basketball/track areas)
- Logo decals on running tracks at the three centers
- Walking bridge signs - Muehlenbeck Center

### Facilities Under Agreement

- Should a facility be damaged or destroyed City shall make a good faith effort to provide comparable alternative.

### Corporate Name Change

- All costs associated shall be paid by THP

### Termination

- For any reason by either party requires 6 months' notice
- If THP cancels, then no refund of any monies already paid
- If City cancels, then no other health care providers as Partners until the date that would end the five year agreement passes

A worksheet is attached outlining the financial impact of this partnership that provides the City with net revenue over the five years of \$702,926. The worksheet includes the 20% annual commission to be paid to CSL Marketing per their contract for services.

I am available to answer any questions you may have.

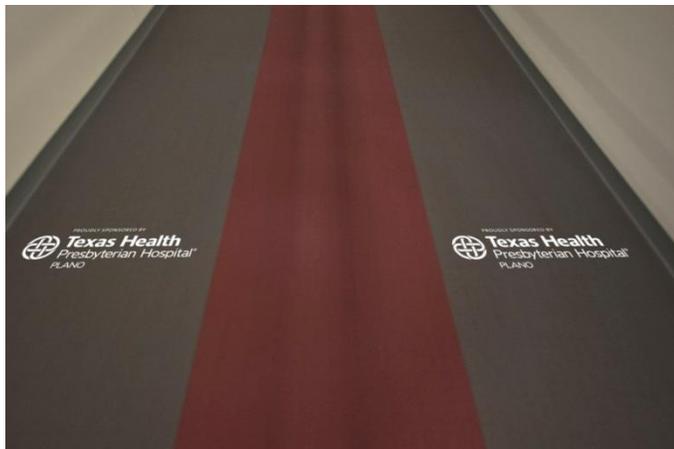
### Sign Examples



Ribbons



Indoor Signs



Track Decals



Walking Bridge Sign

**Plano Partners Program  
December 2011**

		<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	
<b>City of Plano</b>							
		<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	
<u>Revenue</u>							
	Texas Health Plano	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	
	<i>Total Rev</i>	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	
<u>Expense</u>							
	CSL Commission	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000	
	Ribbons *                   14	\$ 76,299					
	Track Decals               15	\$ 5,532					
	Interior Signs              6	\$ 7,605					
	TMC Bridge Signs         4	\$ 7,638					
	<i>Total Exp</i>	\$ 137,074	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000	
	<b>Net</b>	<b>\$ 62,926</b>	<b>\$ 160,000</b>	<b>\$ 160,000</b>	<b>\$ 160,000</b>	<b>\$ 160,000</b>	<b>\$ 702,926</b>

\* This cost includes the purchase and installation of all 14 signs. Future Partner revenue will pay for each name to be added

**A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a corporate sponsorship agreement by and between Texas Health Presbyterian Hospital Plano and the City of Plano; approving its execution by the City Manager or his designee; and providing an effective date.**

**WHEREAS**, the City currently owns and/or operates multiple facilities located in Plano, Texas, and has the ability to provide certain nonexclusive sponsorship rights with respect to the Facilities; and

**WHEREAS**, the City desires to provide sponsorship rights to Texas Health Presbyterian Hospital Plano (Sponsor) and Sponsor desires to obtain such rights from the City; and

**WHEREAS**, the City Council has been presented a corporate sponsorship agreement by and between Texas Health Presbyterian Hospital Plano and the City of Plano, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

**WHEREAS**, upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the Agreement should be approved, and that the City Manager or his designee shall be authorized to execute it on behalf of the City of Plano.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:**

**Section I.** The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

**Section II.** The City Manager, or his designee, is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

**Section III.** This Resolution shall become effective immediately upon its passage.

**DULY PASSED AND APPROVED** this the 13th day of February, 2012.

\_\_\_\_\_  
Phil Dyer, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

**CORPORATE SPONSORSHIP AGREEMENT  
TO PROVIDE SPONSORSHIP RIGHTS FOR  
CITY OF PLANO FACILITIES**

This Corporate Sponsorship Agreement (hereinafter referred to as "Agreement") is entered into on this the \_\_\_ day of \_\_\_\_\_, 2012, by and between **TEXAS HEALTH PRESBYTERIAN HOSPITAL PLANO**, a duly authorized Texas nonprofit corporation, (hereinafter referred to as "Sponsor") acting by and through its duly authorized representative, and the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation located in Collin County, Texas, (hereinafter referred to as the "City") acting by and through its City Manager or his designee.

**RECITALS**

WHEREAS, the City currently owns and/or operates multiple facilities located in Plano, Texas (each, a "Facility", and, collectively, the "Facilities").

WHEREAS, the City has the ability and is authorized to provide certain nonexclusive sponsorship rights as set forth below with respect to the Facilities.

WHEREAS, the City desires to provide to Sponsor and Sponsor desires to obtain from the City the Sponsorship Rights as defined herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

**(1) EFFECTIVE DATE.** This Agreement shall become effective on the latest date of signature fully executing the Agreement (the "Effective Date") which date shall be entered above by the last signatory to the Agreement. In the event of an inconsistency between the date entered above and the latest date of signature fully executing the Agreement, the latest date of signature fully executing the Agreement shall control as the effective date of the Agreement.

**(2) TERM OF AGREEMENT.** This Agreement shall commence as of the Effective Date and shall continue in full force and effect for a period of five (5) years, unless this Agreement is terminated earlier pursuant to the provisions hereof.

**(3) SPONSORSHIP.** During the term of this Agreement, Sponsor shall be a part of the Plano Partners Program, and shall be subject to the terms and conditions set forth herein. The City shall not enter into any Plano Partners Sponsorship Agreements with other health care provider businesses.

#### **(4) SPONSOR RIGHTS AND RESPONSIBILITIES.**

**(a) Sponsorship Fee.** Sponsor shall pay City the sum of **TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00)** per year during the term of this Agreement. The first payment shall be due and payable on or before February 15, 2012, and all subsequent payments shall be due and payable on or before February 15th of each succeeding year. Annual payments unpaid more than thirty (30) days after their due date shall bear interest at the rate of the prime rate plus one percent (1%).

**(b) Sponsor's Website.** Sponsor will provide a link on its website and social media page to the City of Plano's website.

**(c) Health Screenings.** Sponsor shall have the right, but no binding obligation whatsoever, to conduct health screenings, including but not limited to, blood pressure testing, skin cancer screening, or other similar health services for recreation center patrons to each of the four (4) City-owned recreation centers (hereinafter referred to as "Health Screenings"). The costs related to the Health Screening shall be the responsibility of Sponsor and the dates and times of the Health Screenings shall be as mutually agreed upon in writing by the parties. Sponsor shall have the ability to distribute collateral materials to patrons at each of the recreation centers. The specific nature and content of the materials shall be determined by Sponsor and submitted to the City for written approval before distribution at the recreation centers. Sponsor shall also be allowed an area at each of the four (4) recreation centers to leave the materials on display for patrons at times other than during the Health Screenings.

#### **(5) CITY RESPONSIBILITIES.**

**(a) Plano Television Network.** The City shall produce one (1) segment regarding Sponsor's participation in the Plano Partners Program to be aired as determined by the City on the Plano Television Network. Sponsor shall be permitted to review and approve the segment in advance of airing.

**(b) City of Plano Website.** The City website and social media page will provide a link to Sponsor's website.

**(c) Facilities.** City agrees to keep all Facilities at which Sponsor's signs are placed open, adequately staffed and in good repair. In the event the Facilities do not meet these standards in Sponsor's sole discretion, Sponsor, at its option, may direct City to move the sign to another Facility at no cost to Sponsor. City shall provide Sponsor with a list of Facilities to which the sign could be moved. In the event there are no acceptable Facilities, this Agreement shall terminate and City shall refund a pro rata portion of the Sponsorship fee, based on the number of days left in the six month period to which the fee relates.

**(6) SIGNS.**

**(a) Signs Required at City Facilities.** Sponsor signs shall be placed at the City's facilities as follows:

**1. Plano Partners Ribbons.** A Plano Partners Ribbon as represented in **Exhibit "A"** with Sponsor's name added to one of the spaces delineated for the partners on the sign shall be placed at each of the following locations:

- a. Gladys Harrington Library
- b. L.E.R. Schimelpfenig Library
- c. W.O. Haggard Jr. Library
- d. Maribelle M. Davis Library
- e. Christopher A. Parr Library
- f. Carpenter Park Recreation Center
- g. Oak Point Recreation Center
- h. Liberty Recreation Center
- i. Tom Muehlenbeck Center
- j. Russell Creek Park
- k. Heritage Yards at Plano
- l. Enfield Park
- m. Arbor Hills Nature Preserve
- n. Amphitheater at Oak Point Park

**2. Indoor Signs.** Indoor signs as graphically represented in **Exhibit "B"** shall be placed at the following locations:

- a. Carpenter Park Recreation Center – two (2) signs approximately 4 X 14 in size that will be strategically placed in high traffic areas above the basketball and running track court areas.
- b. Oak Point Center - two (2) signs approximately 4 X 14 in size that will be strategically placed in high traffic areas above the basketball and running track court areas.
- c. Tom Muehlenbeck Center- one (1) sign approximately 4 X 14 in size that will be strategically placed at the top of the stairway at the main entrance to the running track.
- d. Liberty Recreation Center – one(1) sign approximately 4 X 14 in size that will be strategically placed as agreed by the parties.

**3. Track Decals.** A maximum of three logo decals as graphically represented in **Exhibit "C"** shall be placed along the running track surface at the following locations:

- a. Tom Muehlenbeck Center
- b. Carpenter Park Recreation Center
- c. Oak Point Recreation Center

**4. Walking Bridge Signs.** Four exterior signs, as graphically represented in **Exhibit “D”**, will be placed on the two walking bridges at the Tom Muehlenbeck Center. Each bridge will have one sign for entry and one sign for exit.

**(b) Other Sign Requirements.** Unless otherwise provided for in this Agreement, the specific design, location, content, number of signs, and size of signs, including decals and logos, shall be submitted by Sponsor to the City for written approval before placement at any of the City facilities. All signs are subject to any restrictions and regulations contained in the City of Plano Code of Ordinances and Zoning Ordinances. The City shall be responsible for the installation of all signs and for obtaining any required permits.

**(c) Sign Costs.** The City shall pay for the signage costs arising out of this Agreement including repair and replacement of signs as needed.

**(d) Ownership and Repair of Signs.** The City shall own all rights, title and interest in and to all signs produced as part of this Agreement.

**(7) TRADEMARKS AND OTHER INTELLECTUAL PROPERTY.** The City and Sponsor acknowledge certain names, trademarks, service marks, copyrights and other intellectual property (“Marks”) are the sole and exclusive property of each of the parties. Therefore, except to the extent required to perform the obligations set forth in this Agreement, the parties shall not have the right to use in any way or reproduce for any purpose the Marks of the other party without their respective prior written consent.

**(8) FACILITY REPAIR.** In the event a Facility included in this Agreement is damaged or destroyed thereby preventing the performance of obligations of this Agreement related to that facility for more than one year, the City shall make a good faith effort to provide a comparable alternate Facility to perform the Sponsorship rights applicable to the closed Facility. If no comparable alternative exists, performance by the City as to that provision of the Agreement is excused with no further liability to the City and the damage, or destruction of the Facility shall not be deemed to be a default or material breach of this Agreement and shall not be cause for termination of the Agreement. If no comparable Facility exists, Sponsor shall be refunded a portion of the Sponsorship fee, based on the number of calendar days that the Facility was damaged or destroyed in the six month period to which the fee relates.

**(9) TERMINATION.**

**(a) For Any Reason.** Either party may, at its option, with or without cause, and without penalty or prejudice to any other remedy it may be entitled to at law or in equity, terminate this Agreement by giving at least six (6) months prior written notice thereof to the opposite party. In the event the Sponsor terminates the Agreement, the Sponsor is not entitled to a refund of any monies paid to the City as of the date of termination. In the event the City terminates this Agreement, the City shall not enter into any Plano Partners Sponsorship Agreements with other health care provider businesses for a period of five (5) years from the effective date of

this Agreement which obligation shall survive the termination of the Agreement by the City pursuant to this Section 9(a) herein.

**(b) Upon Default.** Either party may terminate this Agreement for failure of the other party to perform any obligation undertaken pursuant to this Agreement by notifying the party in writing of such default allowing thirty (30) days for the defaulting party to cure the default. If the default is not cured within the thirty (30) day period, the non-defaulting party may terminate this Agreement at any time thereafter upon written notice to the other party.

**(10) NOTICES.** Unless instructed otherwise in writing, Sponsor agrees that all notices or communications to the City permitted or required under this Agreement shall be addressed to the City at the following address:

Director of Public Information  
P.O. Box 860358  
Plano, Texas 75086-0358

Copy to: City Attorney's Office  
P.O. Box 860358  
Plano, Texas 75086-0358

The City agrees that all notices or communications to Sponsor permitted or required under this Agreement shall be addressed to Sponsor at the following address:

President  
Texas Health Presbyterian Hospital Plano  
6200 W. Parker Rd.  
Plano, TX 75093

Copy to: Legal Department  
Texas Health Resources  
612 E. Lamar Blvd, Suite 900  
Arlington, Texas 76011  
Attention: General Counsel

Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

**(11) RELATIONSHIP OF PARTIES.** This Agreement does not create, and shall not be construed by the Parties or any third person as creating, any agency, partnership, joint venture or employment relationship between or among any of the Parties. The relationship of the Parties under this Agreement shall be solely that of independent contractors. Each Party shall be solely responsible for the conduct of its respective agents and employees in connection with that Party's performance of this Agreement. This is not a third party beneficiary contract. No person or entity other than a Party signing this Agreement shall have any rights under this Agreement.

**(12) ASSIGNMENT OR CHANGE OF NAME.** This Agreement may not be assigned without the express written consent of the non-assigning party, except that Sponsor may assign this Agreement without obtaining the City's consent (a) to one of its wholly owned affiliates, or (b) to any person or entity that directly or indirectly acquires including through merger, purchase or otherwise, all or more than ninety (90) percent of the assets of Sponsor as long as Sponsor gives sixty (60) days prior written notice to the City and the assignee executes an agreement with the City to be bound to all the terms and conditions of this Agreement and be responsible for any default(s) that occurred prior to or after the assignment.

For any assignment not covered by (a) or (b) above, Sponsor must obtain the prior written approval of the City, such approval shall not be unreasonably withheld. The assignee must agree in writing to be bound to all the terms and conditions of this Agreement. In the event the City does not agree to the assignment, this Agreement shall terminate and Sponsor shall be refunded a prorata amount of the Sponsorship fee, based on the number of days from the date of the City's refusal to the end of the six month period for which the payment was made.

Any assignment agreement must be furnished in a form reasonably acceptable to the City and be provided at least thirty days prior to the effective assignment date. The City agrees to notify the potential assignee of any known default, but such notification shall not excuse defaults that are not yet known to the City.

In the event of a change to Sponsor's name during the term of this Agreement, Sponsor shall give sixty (60) days prior written notice to the City of the change.

All work required to reflect any name change pursuant to this section shall be performed by or through the City. All costs and expenses associated with such change, including but not limited to the City project management expenses, sign replacement, design and production of new materials, etc. shall be paid by Sponsor within thirty (30) days after the date of the City's invoice thereof.

**(13) SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon the parties hereto, their successors, heirs, personal representatives and assigns.

**(14) AFFIDAVIT OF NO PROHIBITED INTEREST.** Sponsor acknowledges and represents it is aware of all applicable laws, City Charter, and City Code of Conduct regarding prohibited interests and that the existence of a prohibited interest at any time will render the Agreement voidable. Sponsor has executed the Affidavit of No Prohibited Interest, attached and incorporated herein as **Exhibit " E"**.

**(15) ENTIRE AGREEMENT.** This Agreement contains the entire Agreement and understanding of the Parties relating to the subject matter of this Agreement, superseding any and all prior or contemporaneous agreements and understandings and may not be modified or amended except by further written agreement duly executed by all Parties. No representations, promises or warranties have been made or relied upon by any Party other than those expressly set forth in this Agreement.

**(16) AMENDMENTS.** No addition to, deletion from or other modification of any of the provisions hereof shall be valid unless made in writing and signed by an authorized representative of each of the parties hereto.

**(17) AGREEMENT COUNTERPARTS.** This Agreement may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect and may be delivered by electronic delivery of a digitized signature or by facsimile.

**(18) APPLICABLE LAW; VENUE.** This Agreement shall be subject and subordinate to all federal, state and local laws and regulations, either presently in existence or as may be enacted, made or enforced from time to time after the effective date of this Agreement. This Agreement shall be construed under the Laws of the State of Texas. The venue for any action brought hereunder shall be in Collin County.

**(19) AGREEMENT INTERPRETATION.** Although this Agreement is drafted by the City, should any part be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

**(20) SEVERABILITY.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of the Agreement.

**(21) HEADINGS.** The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

**(22) AUTHORITY TO SIGN.** The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

**(23) INSURANCE.** In the event Sponsor provides services under Section 4(c) hereof, Sponsor shall procure and maintain for the duration of this Agreement insurance coverage as set forth in the Insurance Requirements marked **Exhibit "F"** attached hereto and incorporated herein by reference. Sponsor shall provide a signed insurance certificate verifying that they have obtained the required insurance coverage prior to the effective date of this Agreement.

**(24) INDEMNIFICATION AND SURVIVAL.** In the event Sponsor provides services under Section 4(c) hereof, this Section 24 shall apply.

**(a) INDEMNIFICATION.**

**SPONSOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES,**

HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY SPONSOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE SPONSOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH SPONSOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS AGREEMENT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

SPONSOR AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND THE CITY AGAINST ALL SUCH CLAIMS. THE CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, THE CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY THE CITY IS NOT TO BE CONSTRUED AS A WAIVER OF SPONSOR'S OBLIGATION TO DEFEND THE CITY OR AS A WAIVER OF SPONSOR'S OBLIGATION TO INDEMNIFY THE CITY PURSUANT TO THIS AGREEMENT. SPONSOR SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF THE CITY'S WRITTEN NOTICE THAT THE CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, THE CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND SPONSOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

**(b) Survival.** Notwithstanding anything to the contrary set forth herein, the indemnification obligations under this section shall survive the termination or expiration of this Agreement for any reason.

**IN WITNESS WHEREOF**, the parties have executed this Agreement by signing below to be effective on the date of execution by the City.

**TEXAS HEALTH PRESBYTERIAN HOSPITAL PLANO**

Date: \_\_\_\_\_

By: \_\_\_\_\_

**Jeffrey Canose, M.D.**  
**PRESIDENT,**  
**TEXAS HEALTH PRESBYTERIAN PLANO**

Date: \_\_\_\_\_

By: \_\_\_\_\_

**Barclay Berdan**  
**SENIOR EXECUTIVE VICE PRESIDENT,**  
**TEXAS HEALTH RESOURCES**

APPROVED AS TO FORM:

\_\_\_\_\_  
Paige Fugate  
TEXAS HEALTH RESOURCES ATTORNEY

**CITY OF PLANO, TEXAS**

Date: \_\_\_\_\_

By: \_\_\_\_\_

**Bruce D. Glasscock**  
**CITY MANAGER**

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

**ACKNOWLEDGMENTS**

**STATE OF TEXAS** §  
§  
**COUNTY OF \_\_\_\_\_** §

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2012 by **JEFF CANOSE**, President, of **TEXAS HEALTH PRESBYTERIAN HOSPITAL PLANO**, a nonprofit Texas corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

**STATE OF TEXAS** §  
§  
**COUNTY OF \_\_\_\_\_** §

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2012 by **Barclay Berdan**, **SENIOR EXECUTIVE VICE PRESIDENT**, **TEXAS HEALTH RESOURCES**, a nonprofit Texas corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

**STATE OF TEXAS** §  
§  
**COUNTY OF COLLIN** §

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2012 by **BRUCE D. GLASSCOCK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

# EXHIBIT "A"

## PLANO PARTNERS RIBBON



**EXHIBIT "B"**  
**Indoor Signs**

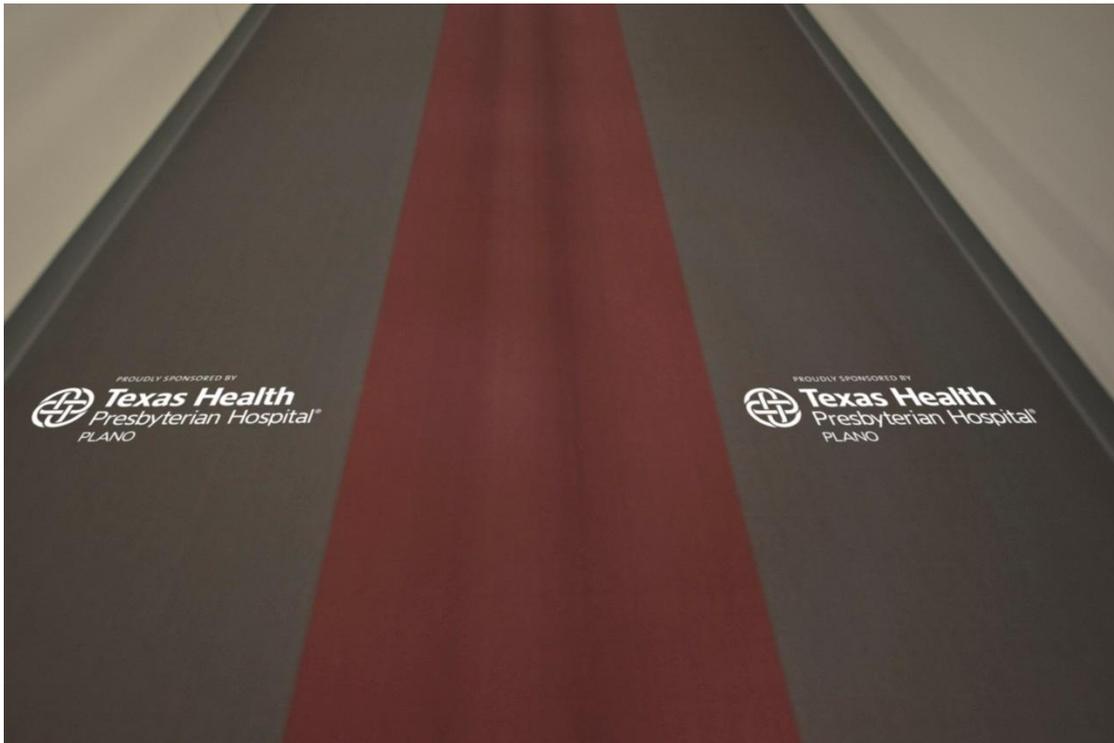


 *A proud sponsor of Carpenter Park Recreation Center*



# EXHIBIT "C"

## Track Decals



# EXHIBIT "D"

## Walking Bridge Signs



**EXHIBIT "E"**

**AFFIDAVIT OF NO PROHIBITED INTEREST**

I, the undersigned declare that I am authorized to make this statement on behalf of **TEXAS HEALTH PRESBYTERIAN HOSPITAL PLANO**, a duly authorized Texas nonprofit corporation, and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of **TEXAS HEALTH PRESBYTERIAN HOSPITAL PLANO**, is employed by the City of Plano or is an elected or appointed official of the City of Plano within the restrictions of the Plano City Charter.

I am aware that Section 11.02 of the City Charter states:

"No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, nor shall be financially interested, directly or indirectly, in the sale to the City of any land, or rights or interest in any land, materials, supplies or service. The above provision shall not apply where the interest is represented by ownership of stock in a corporation involved, provided such stock ownership amounts to less than one percent (1%) of the corporation stock. Any violation of this section shall constitute malfeasance in office, and any officer or employee of the City found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the persons or corporation contracting with the City shall render the contract voidable by the City Manager or the City Council."

I further understand and acknowledge that a violation of Section 11.02 of the City Charter at anytime during the term of this contract will render the contract voidable by the City.

**TEXAS HEALTH PRESBYTERIAN HOSPITAL PLANO**

By: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print Name  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date

**STATE OF TEXAS** §  
§  
**COUNTY OF** \_\_\_\_\_ §

**SUBSCRIBED AND SWORN TO** before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

**EXHIBIT “F”**  
**INSURANCE REQUIREMENTS**

1.0 General Provisions

- 1.1 Sponsor shall obtain and maintain the minimum insurance coverage set forth in this section. By requiring such minimum insurance, City shall not be deemed or construed to have assessed the risk that may or may not be applicable to the Sponsor. The Sponsor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Sponsor is not relieved of any liability or other obligation assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The insurance requirements listed below do not replace any warranty or surety (performance, payment, or maintenance) bonds if required by preceding or subsequent sections of this contract.
- 1.2 Sponsor shall cause each subcontractor employed by Sponsor to purchase and maintain insurance of the type specified herein or cover such subcontractors under its insurance coverage.
- 1.3 Sponsor agrees that the insurance requirements specified in this section do not reduce the liability Sponsor has assumed in any indemnification/hold harmless section of this contract.
- 1.4 City reserves the right to approve the security of the insurance coverage provided pursuant to this section by insurers including terms, conditions and the Certificate of Insurance. Failure of the Sponsor to fully comply with requirements of this section during the term of the contract will be considered a material breach of contract and will be cause for immediate termination of the contract at the option of City.
- 1.5 Insurance coverage required by this section shall:
- 1.5.1 Be on a primary basis, non-contributory with any other insurance coverage and/or self-insurance carried by City
- 1.6 **Subcontractor Insurance.** If the contractor utilizes the services of another company or subcontractor, affiliate or non-affiliate, in order to fulfill the requirements covered under this Agreement, then those other companies or subcontractors must comply with the insurance provisions within this Agreement.

2.0 Minimum Insurance Coverage & Limits

- 2.1 Commercial General Liability.** Sponsor shall maintain commercial general liability and, if necessary commercial umbrella insurance as specified below.

- 2.1.1 Commercial general liability insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage including self insurance) and shall cover liability arising from premises, operations, independent contractors, product-complete operations, personal and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
- 2.1.2 City, the City Council and its members, the City's agents, officers, directors and employees shall be included as an additional insured under the commercial general liability using **ISO additional insured endorsement CG 20 10 and CG 20 37** or their equivalent including self insurance, including coverage for City with respect to liability arising out of the completed operations of Sponsor.
- 2.1.3 Limits of Insurance
  - 2.1.3.1 \$1,000,000 Per Occurrence
  - 2.1.3.2 \$1,000,000 Personal/Advertising Injury
  - 2.1.3.3 \$2,000,000 General Aggregate
  - 2.1.3.4 \$2,000,000 Products/Completed Operations Aggregate

**2.2 Commercial Automobile Liability.** Sponsor shall maintain business automobile liability insurance and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident.

- 2.2.1 Such automobile liability insurance shall cover liability arising out of any auto (including owned, hired, and non-owned automobiles).
- 2.2.2 Commercial automobile coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to the provided ISO form CA 00 01.
- 2.2.3 Sponsor waives all rights against City and its agents, officers, directors and employees for recovery by the commercial automobile liability or commercial umbrella liability insurance obtained by Sponsor pursuant to this section or under any applicable automobile physical damage coverage.

**2.3 Workers' Compensation & Employer Liability.** Sponsor shall maintain workers' compensation insurance in the amounts required by appropriate state statute. The employers liability limit and, if necessary, commercial umbrella coverage shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

- 2.3.1 Sponsor waives all rights against City, the City Council and its members, the City's agents, officers, directors and employees for recovery of damages under contractor's workers' compensation and employers

liability or commercial umbrella liability insurance. Sponsor must cause a **waiver of subrogation** to be effected under its workers' compensation coverage using endorsement WC 00 03 13.

**2.4 Professional Liability.** Sponsor shall maintain professional liability insurance covering allegations of bodily injury and actual bodily injury caused or alleged stemming from actions or errors in carrying out activities. Coverage shall extend to facilities other than the Sponsor's place of business, including but not limited to City of Plano locations and cover:

2.4.1 Direct Employees. Employees directly hired by the Sponsor.

2.4.2 Contract Employees. Individuals who enter into an arrangement with the Sponsor and are given rights or allowed to engage in activities on behalf of the Sponsor.

2.5 Professional Liability limits shall not be less than \$250,000 per occurrence for Direct Employees and Contract Employees, and \$500,000 per occurrence for the Sponsor facilities.

2.6 If coverage required by this section is written on a claims-made basis, the Sponsor warrants that any applicable retroactive date under the policy proceeds the effective date of this Agreement; and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of one (1) year beginning from the time that work under the Agreement is completed.

### 3.0 Evidence of Insurance

3.1 Prior to commencement of work, and thereafter upon renewal or replacement of coverage required by this section, Sponsor shall furnish City a certificate(s) of insurance, including for subcontractors cited in Section 1.6, executed by a duly authorized representative of each insurer, showing compliance with this section. **Sponsor shall furnish certificates of insurance to insurance policies as required by each section herein to the City.**

3.2 Failure of City to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Sponsor's obligation to maintain such insurance.

3.3 City shall have the right, but not the obligation, of prohibiting Sponsor or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City.

3.4 Failure to maintain required insurance may result in termination of this contract at sole option of the City.

- 3.5 The Sponsor shall furnish a Certificate of Insurance (COI) evidencing insurance coverage required by this section ten (10) business days preceding commencement of contracted service(s). The COI shall:
- 3.5.1 List each insurers' NAIC Number or FEIN
  - 3.5.2 List **contract number, project name**/number, name of event, location (building name, building address, etc.), date(s) of event or service being performed
  - 3.5.3 State insurance is on a primary basis and non-contributory with any insurance/or self-insurance carried by City
  - 3.5.4 List the specific number of days cancellation provided pursuant to policy language for notice of cancellation on certificate
  - 3.5.5 List City of Plano, Risk Management Division, 7501 A Independence Parkway, Plano, Texas, 75025 in the Certificate Holder Section



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		2/13/12		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): <b>Katherine Crumbley - x-7479</b>				
<b>CAPTION</b>				
A Resolution of the City Council of the City of Plano, Texas, approving the Investment Portfolio Summary for the quarter ending December 31, 2011 and providing an effective date.				
<b>FINANCIAL SUMMARY</b>				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: <b>2011-2012</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	0	0	<b>0</b>
Encumbered/Expended Amount	0	0	0	<b>0</b>
This Item	0	0	0	<b>0</b>
<b>BALANCE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>FUND(s):</b>				
<b>COMMENTS:</b> This item has no fiscal impact. STRATEGIC PLAN GOAL: Investment Portfolio Summary Reviews relate to the City's Goal of Financially Strong City with Service Excellence.				
<b>SUMMARY OF ITEM</b>				
Quarterly Investment report ending December 31, 2011.				
List of Supporting Documents: Investment Portfolio Summary			Other Departments, Boards, Commissions or Agencies	

**A Resolution of the City Council of the City of Plano, Texas, approving the Investment Portfolio Summary for the quarter ending December 31, 2011 and providing an effective date.**

**WHEREAS**, the City Council has been presented the City of Plano’s Investment Portfolio Summary for the Quarter Ending December 31, 2011, a substantial copy of which is attached hereto as Exhibit “A” and incorporated herein by reference (hereinafter called “Investment Portfolio Summary”); and

**WHEREAS**, the Public Funds Investment Act at Texas Government Code, Section 2256.005, requires the governing body of an investing entity to review its investment policy and investment strategies not less than annually; and

**WHEREAS**, upon full review and consideration of the Investment Portfolio Summary, and all matters attendant and related thereto, the City Council is of the opinion that the same should be approved.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:**

**Section I.** The City of Plano’s Investment Portfolio Summary for the Quarter Ending December 31, 2011, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, is hereby in all things approved.

**Section II.** This Resolution shall become effective immediately upon its passage.

**DULY PASSED AND APPROVED** this the 13th day of February, 2012.

\_\_\_\_\_  
Phil Dyer, MAYOR

ATTEST:

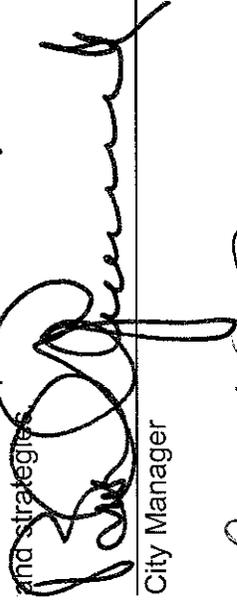
\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

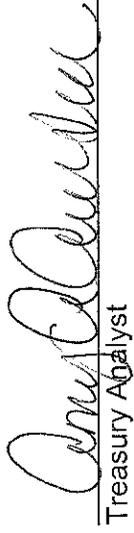
**City of Plano**  
**INVESTMENT PORTFOLIO SUMMARY**  
**For the Quarter Ended**  
**December 31, 2011**

The investment portfolio of the City of Plano is in compliance with the Public Funds Investment Act and the City's Investment Policy and strategies.

  
\_\_\_\_\_  
City Manager

  
\_\_\_\_\_  
Director of Finance

  
\_\_\_\_\_  
Treasurer

  
\_\_\_\_\_  
Treasury Analyst

**Federal Reserve Press Release, January 25, 2011**

Information received since the Federal Open Market Committee met in December suggests that the economy has been expanding moderately, notwithstanding some slowing in global growth. While indicators point to some further improvement in overall labor market conditions, the unemployment rate remains elevated. Household spending has continued to advance, but growth in business fixed investment has slowed, and the housing sector remains depressed. Inflation has been subdued in recent months, and longer-term inflation expectations have remained stable.

Consistent with its statutory mandate, the Committee seeks to foster maximum employment and price stability. The Committee expects economic growth over coming quarters to be modest and consequently anticipates that the unemployment rate will decline only gradually toward levels that the Committee judges to be consistent with its dual mandate. Strains in global financial markets continue to pose significant downside risks to the economic outlook. The Committee also anticipates that over coming quarters, inflation will run at levels at or below those consistent with the Committee's dual mandate.

To support a stronger economic recovery and to help ensure that inflation, over time, is at levels consistent with the dual mandate, the Committee expects to maintain a highly accommodative stance for monetary policy. In particular, the Committee decided today to keep the target range for the federal funds rate at 0 to 1/4 percent and currently anticipates that economic conditions--including low rates of resource utilization and a subdued outlook for inflation over the medium run--are likely to warrant exceptionally low levels for the federal funds rate at least through late 2014.

The Committee also decided to continue its program to extend the average maturity of its holdings of securities as announced in September. The Committee is maintaining its existing policies of reinvesting principal payments from its holdings of agency debt and agency mortgage-backed securities in agency mortgage-backed securities and of rolling over maturing Treasury securities at auction. The Committee will regularly review the size and composition of its securities holdings and is prepared to adjust those holdings as appropriate to promote a

<u>Asset Type</u>	<u>Ave. Yield</u>	<u>December 31, 2011</u>		<u>September 30, 2011</u>	
		<u>End Book Value</u>	<u>End Market Value</u>	<u>End Book Value</u>	<u>End Market Value</u>
Pools/NOW Accounts	0.10%	109,494,545.21	109,494,545.21	114,436,512.80	114,436,512.80
Certificates of Deposit	0.87%	32,468,748.71	32,468,748.71	32,468,748.71	32,468,748.71
FHLB Bonds	1.18%	87,962,391.52	89,038,418.00	66,866,385.79	68,036,384.39
FHLMC Bonds	1.21%	85,609,857.18	87,097,810.00	83,832,557.18	85,347,704.00
FNMA Bonds	0.79%	89,102,889.68	89,779,151.93	67,315,391.70	67,995,449.00
<b>Totals</b>		<b>404,638,432.30</b>	<b>407,878,673.85</b>	<b>364,919,596.18</b>	<b>368,284,798.90</b>

**Average Yield (1):**

Total Portfolio 0.78%

**Fiscal Year-to-Date Average Yield (2):**

Total Portfolio 0.81%

**This Quarter:**

Rolling Six Month Treasury Yield	0.05%
Rolling Two Year Treasury Yield	0.26%
TexPool Yield	0.09%

**Last 12 Months:**

Rolling Six Month Treasury Yield	0.10%
Rolling Two Year Treasury Yield	0.45%
TexPool Yield	0.12%

**Investment Earnings (3):**

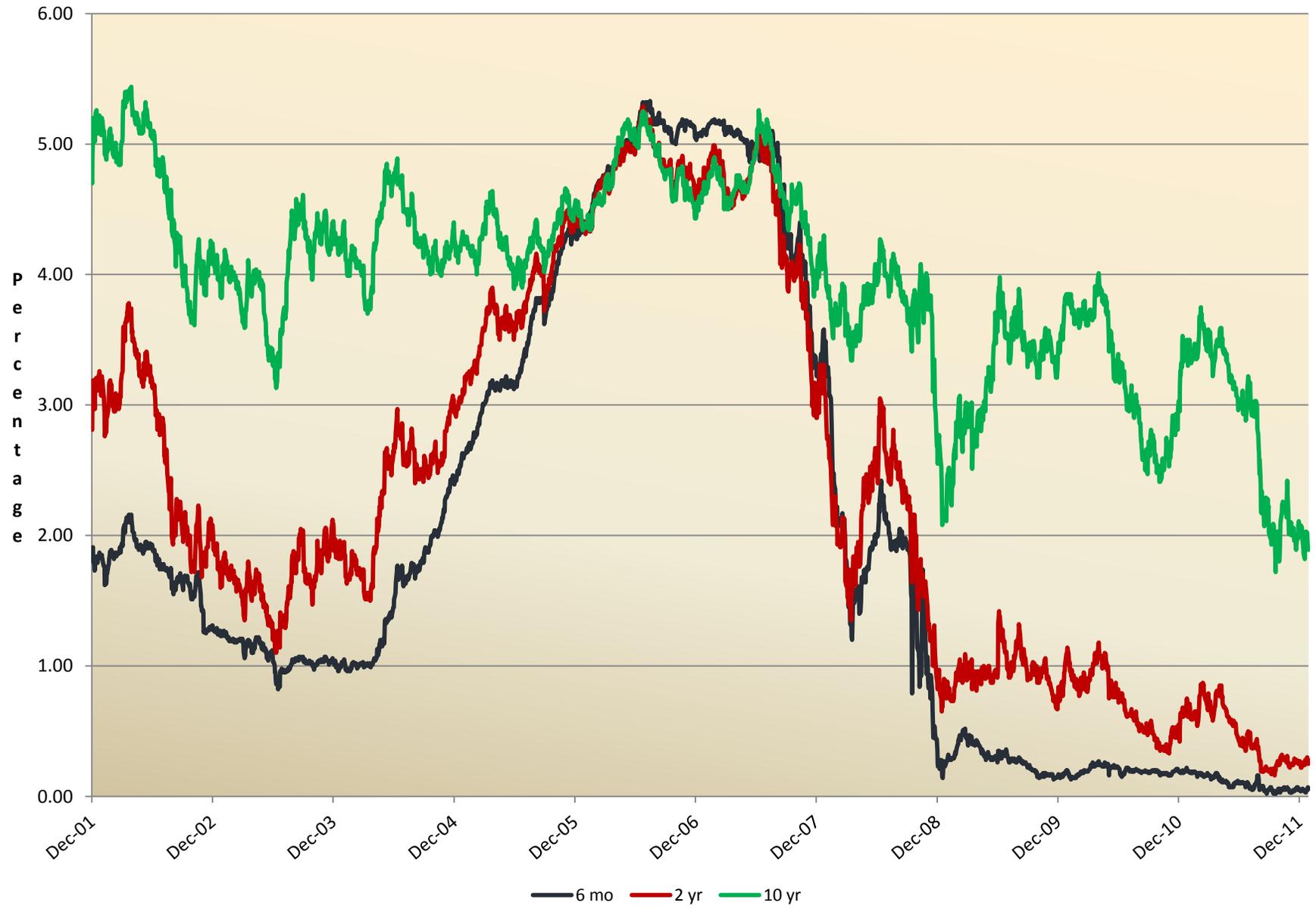
Quarter	\$	693,833
Fiscal Year To Date	\$	693,833

(1) Average Yield calculated using quarter end report yields and adjusted book values does not reflect a total return analysis or account for advisory fees.

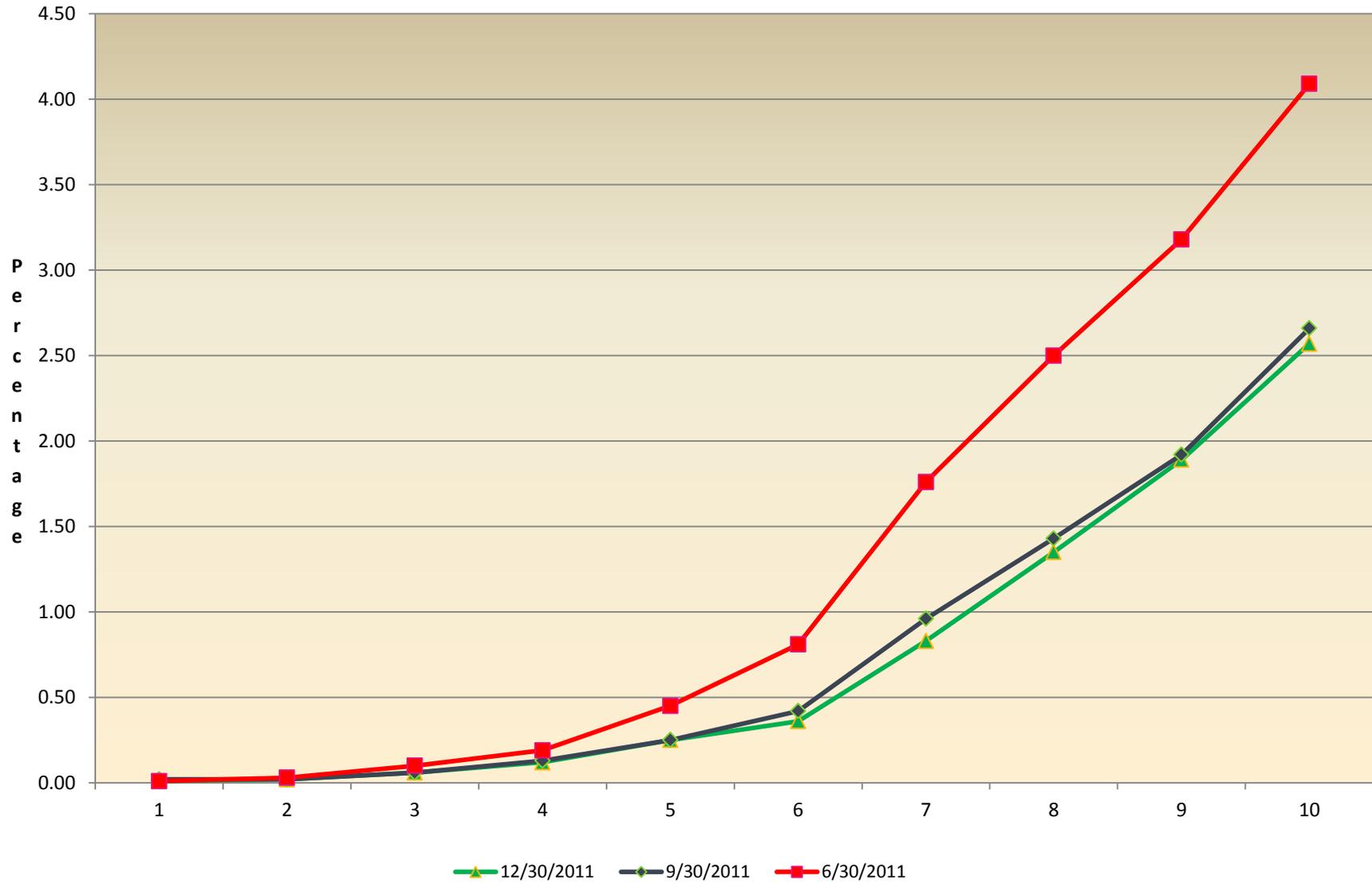
(2) Fiscal Year-to-Date Average Yields calculated using quarter end report yields and adjusted book values and does not reflect a total return analysis or account for advisory fees.

(3) Interest earnings are obtained from the general ledger - Interest plus/minus Gain or Loss on Investments plus/minus Unrealized Gain or Loss.

# US Treasury Historical Yields



# Treasury Yield Curves



# S & P 500





**Detail of Security Holdings**  
December 31, 2011

By Sector

Security Description	Ratings	Coupon/ YTM	Maturity Date	Settlement Date	Call Date	Par Value	Purchased Value	Adjusted Book Value	Market Price	Market Value	Life (mo)	Yield	Accrued Interest
FHLB Bonds	AAA	1.00%	2/27/2012	3/9/2010		8,000,000.00	8,004,824.00	8,000,388.60	1.00	8,010,552.00	1.90	0.97%	27,555.56
FHLB Bonds	AAA	1.30%	7/26/2012	3/12/2010		8,725,000.00	8,734,565.45	8,727,294.83	1.01	8,777,908.40	6.82	1.25%	48,835.76
FHLB Bonds	AAA	2.00%	9/14/2012	3/11/2010		17,000,000.00	17,256,428.00	17,072,068.00	1.01	17,207,672.00	8.46	1.39%	101,055.55
FHLB Bonds	AAA	0.80%	4/19/2013	10/3/2011		11,000,000.00	11,069,740.00	11,058,734.93	1.01	11,068,002.00	15.57	0.39%	15,888.89
FHLB Bonds	AAA	1.00%	9/13/2013	12/30/2011		10,000,000.00	10,107,852.96	10,107,679.84	1.01	10,101,720.00	20.39	0.36%	30,000.00
FHLB Bonds	AAA	2.38%	3/14/2014	2/15/2011		15,000,000.00	15,335,700.00	15,240,340.87	1.04	15,614,115.00	26.36	1.63%	105,885.42
FHLB Bonds	AAA	1.38%	9/12/2014	9/30/2010		10,000,000.00	10,054,542.50	10,037,268.82	1.02	10,205,960.00	32.33	1.23%	41,631.94
FHLB Bonds	AAA	2.75%	3/13/2015	2/7/2011		7,565,000.00	7,761,622.75	7,718,615.63	1.06	8,052,488.60	38.30	2.09%	62,411.25
FHLMC Bonds	AAA	0.38%	11/30/2012	7/29/2011		5,000,000.00	4,999,265.00	4,999,497.50	1.00	5,009,735.00	10.98	0.39%	1,562.50
FHLMC Bonds	AAA	1.72%	4/11/2013	10/27/2010		3,000,000.00	3,086,610.00	3,045,091.27	1.02	3,053,709.00	15.31	0.53%	11,466.67
FHLMC Bonds	AAA	4.50%	7/15/2013	7/27/2011		7,000,000.00	7,545,050.44	7,426,033.86	1.06	7,445,060.00	18.43	0.52%	145,250.00
FHLMC Bonds	AAA	4.13%	9/27/2013	7/12/2010		15,000,000.00	16,329,150.00	15,720,664.45	1.06	15,963,120.00	20.85	1.30%	161,562.50
FHLMC Bonds	AAA	0.60%	10/25/2013	10/25/2011	1/25/2012	13,000,000.00	12,993,500.00	12,994,095.76	1.00	13,001,794.00	21.77	0.63%	14,300.00
FHLMC Bonds	AAA	3.00%	7/28/2014	10/28/2010		11,000,000.00	11,820,710.00	11,563,526.22	1.06	11,672,342.00	30.82	0.97%	140,250.00
FHLMC Bonds	AAA	1.75%	9/10/2015	9/27/2010		17,000,000.00	17,088,555.17	17,066,036.99	1.03	17,539,495.00	44.23	1.64%	91,729.17
FHLMC Bonds	AAA	1.75%	9/10/2015	2/3/2011		13,000,000.00	12,744,589.10	12,794,911.13	1.03	13,412,555.00	44.23	2.20%	70,145.83
FNMA Bonds	AAA	1.00%	4/4/2012	3/8/2010		6,000,000.00	5,986,158.00	5,998,265.18	1.00	6,013,794.00	3.11	1.11%	14,500.00
FNMA Bonds	AAA	1.88%	4/20/2012	1/21/2011		6,000,000.00	6,111,240.00	6,027,137.67	1.01	6,031,818.00	3.64	0.38%	22,187.50
FNMA Bonds	AAA	4.38%	9/15/2012	7/27/2011		15,000,000.00	15,686,250.00	15,427,256.61	1.03	15,437,220.00	8.49	0.33%	193,229.17
FNMA Bonds	AAA	0.50%	10/30/2012	7/28/2011		13,000,000.00	13,019,890.00	13,013,144.70	1.00	13,031,031.00	9.97	0.38%	10,833.33
FNMA Bonds	AAA	1.25%	8/20/2013	10/27/2010		10,000,000.00	10,164,100.00	10,095,458.95	1.01	10,139,960.00	19.61	0.66%	45,486.11
FNMA Bonds	AAA	0.55%	9/27/2013	12/30/2011	3/27/2012	8,000,000.00	8,004,952.00	8,004,944.23	1.00	7,990,464.00	20.85	0.51%	11,488.89
FNMA Bonds	AAA	Step	10/24/2013	10/24/2011	8/28/2012	5,000,000.00	5,000,000.00	5,000,000.00	1.00	5,002,675.00	21.74	0.66%	3,489.58
FNMA Bonds	AAA	0.65%	8/28/2014	12/30/2011	4/24/2012	9,085,000.00	9,085,000.00	9,085,000.00	1.00	9,074,624.93	31.84	0.65%	20,012.24
FNMA Bonds	AAA	5.00%	4/15/2015	3/29/2011		15,000,000.00	16,786,500.00	16,451,682.34	1.14	17,057,565.00	39.38	1.92%	158,333.33
<b>TOTAL</b>						<b>400,338,293.92</b>	<b>406,740,089.29</b>	<b>404,638,432.30</b>		<b>407,878,673.85</b>	<b>15.02</b>	<b>0.78%</b>	<b>1,786,099.54</b>

(1) (2)

**(1) Weighted average life** - For purposes of calculating weighted average life bank, pool, and money market investments are assumed to mature the next business day.

**(2) Weighted average yield to maturity** - The weighted average yield to maturity is based on adjusted book value, realized and unrealized gains/losses and investment advisory fees are not considered. The yield is for this month only.



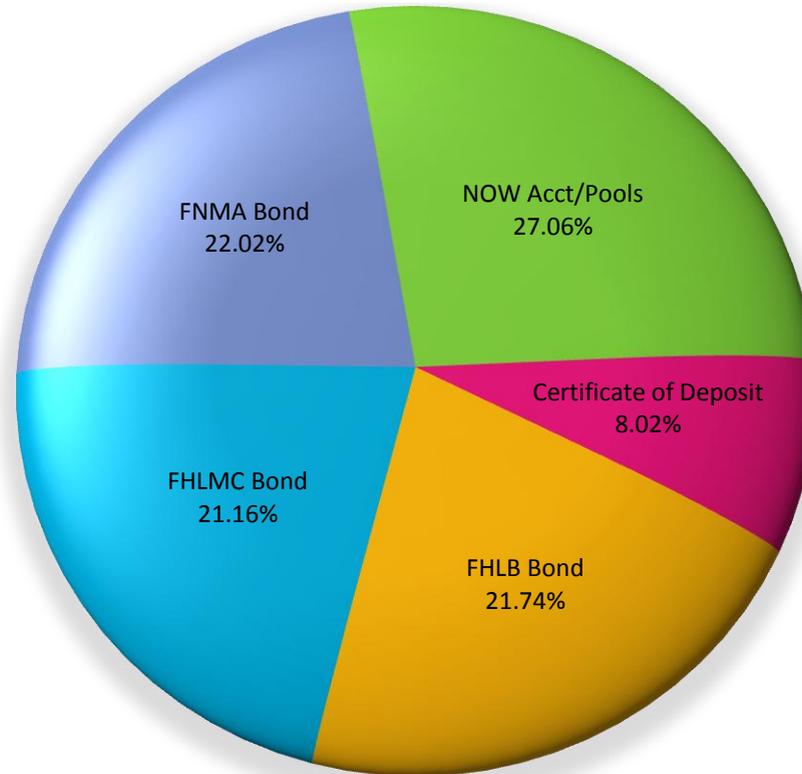
**Detail of Security Holdings**  
**December 31, 2011**

**By Maturity**

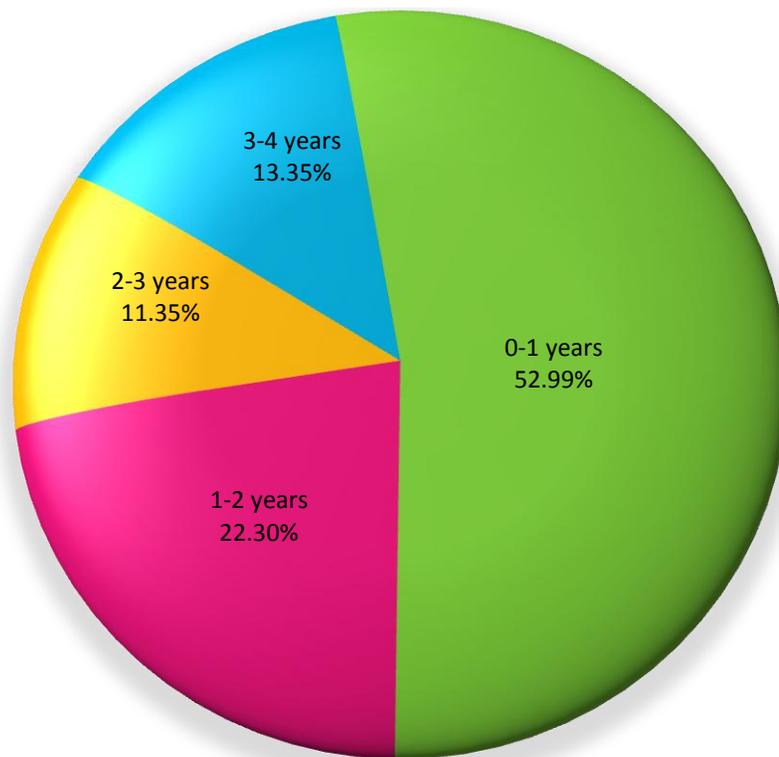
Security Description	Ratings	Coupon/ YTM	Maturity Date	Settlement Date	Call Date	Par Value	Purchased Value	Adjusted Book Value	Market Price	Market Value	Life (mo)	Yield	Accrued Interest
FHLB Bonds	AAA	2.00%	9/14/2012	3/11/2010		17,000,000.00	17,256,428.00	17,072,068.00	1.01	17,207,672.00	8.46	1.39%	101,055.55
FNMA Bonds	AAA	4.38%	9/15/2012	7/27/2011		15,000,000.00	15,686,250.00	15,427,256.61	1.03	15,437,220.00	8.49	0.33%	193,229.17
Certificate of Deposit		1.00%	10/13/2012	5/13/2011		151,804.10	151,804.10	151,804.10	1.00	151,804.10	9.41	1.00%	978.29
FNMA Bonds	AAA	0.50%	10/30/2012	7/28/2011		13,000,000.00	13,019,890.00	13,013,144.70	1.00	13,031,031.00	9.97	0.38%	10,833.33
FHLMC Bonds	AAA	0.38%	11/30/2012	7/29/2011		5,000,000.00	4,999,265.00	4,999,497.50	1.00	5,009,735.00	10.98	0.39%	1,562.50
Certificate of Deposit		1.00%	1/13/2013	1/13/2011		5,047,593.52	5,047,593.52	5,047,593.52	1.00	5,047,593.52	12.43	1.00%	48,678.16
FHLMC Bonds	AAA	1.72%	4/11/2013	10/27/2010		3,000,000.00	3,086,610.00	3,045,091.27	1.02	3,053,709.00	15.31	0.53%	11,466.67
FHLB Bonds	AAA	0.80%	4/19/2013	10/3/2011		11,000,000.00	11,069,740.00	11,058,734.93	1.01	11,068,002.00	15.57	0.39%	15,888.89
FHLMC Bonds	AAA	4.50%	7/15/2013	7/27/2011		7,000,000.00	7,545,050.44	7,426,033.86	1.06	7,445,060.00	18.43	0.52%	145,250.00
FNMA Bonds	AAA	1.25%	8/20/2013	10/27/2010		10,000,000.00	10,164,100.00	10,095,458.95	1.01	10,139,960.00	19.61	0.66%	45,486.11
Certificate of Deposit		1.45%	8/22/2013	8/26/2010		1,500,000.00	1,500,000.00	1,500,000.00	1.00	1,500,000.00	19.67	1.45%	19,843.15
FHLB Bonds	AAA	1.00%	9/13/2013	12/30/2011		10,000,000.00	10,107,852.96	10,107,679.84	1.01	10,101,720.00	20.39	0.36%	30,000.00
FHLMC Bonds	AAA	4.13%	9/27/2013	7/12/2010		15,000,000.00	16,329,150.00	15,720,664.45	1.06	15,963,120.00	20.85	1.30%	161,562.50
FNMA Bonds	AAA	0.55%	9/27/2013	12/30/2011	3/27/2012	8,000,000.00	8,004,952.00	8,004,944.23	1.00	7,990,464.00	20.85	0.51%	11,488.89
FNMA Bonds	AAA	Step	10/24/2013	10/24/2011	8/28/2012	5,000,000.00	5,000,000.00	5,000,000.00	1.00	5,002,675.00	21.74	0.66%	3,489.58
FHLMC Bonds	AAA	0.60%	10/25/2013	10/25/2011	1/25/2012	13,000,000.00	12,993,500.00	12,994,095.76	1.00	13,001,794.00	21.77	0.63%	14,300.00
Certificate of Deposit		0.64%	11/29/2013	11/29/2011		244,000.00	244,000.00	244,000.00	1.00	244,000.00	22.92	0.64%	138.81
FHLB Bonds	AAA	2.38%	3/14/2014	2/15/2011		15,000,000.00	15,335,700.00	15,240,340.87	1.04	15,614,115.00	26.36	1.63%	105,885.42
FHLMC Bonds	AAA	3.00%	7/28/2014	10/28/2010		11,000,000.00	11,820,710.00	11,563,526.22	1.06	11,672,342.00	30.82	0.97%	140,250.00
FNMA Bonds	AAA	0.65%	8/28/2014	12/30/2011	4/24/2012	9,085,000.00	9,085,000.00	9,085,000.00	1.00	9,074,624.93	31.84	0.65%	20,012.24
FHLB Bonds	AAA	1.38%	9/12/2014	9/30/2010		10,000,000.00	10,054,542.50	10,037,268.82	1.02	10,205,960.00	32.33	1.23%	41,631.94
FHLB Bonds	AAA	2.75%	3/13/2015	2/7/2011		7,565,000.00	7,761,622.75	7,718,615.63	1.06	8,052,488.60	38.30	2.09%	62,411.25
FNMA Bonds	AAA	5.00%	4/15/2015	3/29/2011		15,000,000.00	16,786,500.00	16,451,682.34	1.14	17,057,565.00	39.38	1.92%	158,333.33
FHLMC Bonds	AAA	1.75%	9/10/2015	9/27/2010		17,000,000.00	17,088,555.17	17,066,036.99	1.03	17,539,495.00	44.23	1.64%	91,729.17
FHLMC Bonds	AAA	1.75%	9/10/2015	2/3/2011		13,000,000.00	12,744,589.10	12,794,911.13	1.03	13,412,555.00	44.23	2.20%	70,145.83
<b>TOTAL</b>						<b>400,338,293.92</b>	<b>406,740,089.29</b>	<b>404,638,432.30</b>		<b>407,878,673.85</b>	<b>15.02</b>	<b>0.78%</b>	<b>1,786,099.54</b>

(1) (2)

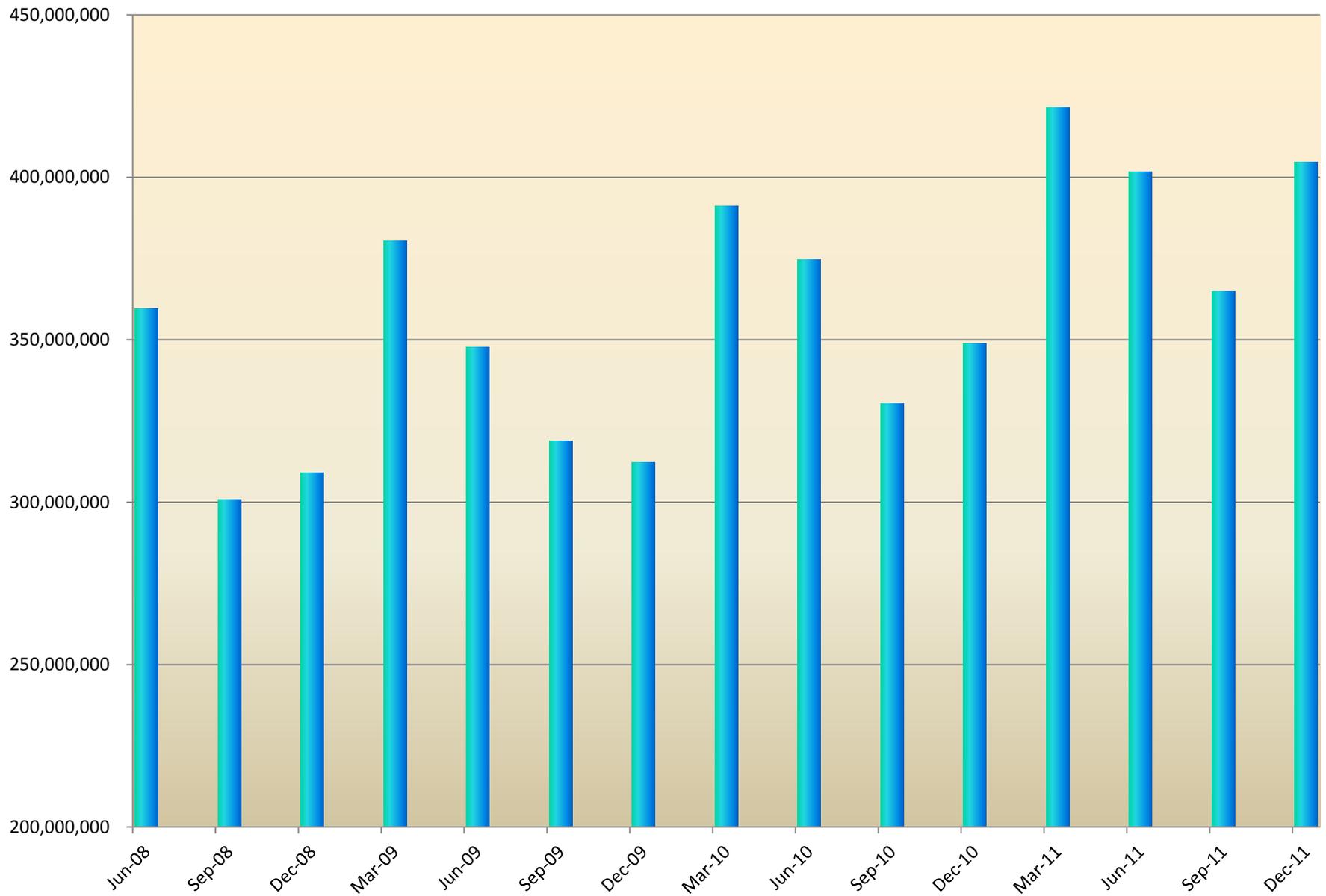
## Portfolio Composition 12/31/11



## Portfolio Maturities 12/31/11



## Quarter End Book Value



## Adjusted Book Value Comparison

Security Description	Coupon/ Yield	Maturity Date	September 30, 2011		Purchase/ Adjustment	Maturity/Call/ Adjustment	December 31, 2011	
			Par Value	Adjusted Book Value			Par Value	Adjusted Book Value
Frost NOW Account	0.00%	04/01/10	25,439,122.77	25,439,122.77	332,924.92	-	25,772,047.69	25,772,047.69
Legacy NOW Account	0.26%	04/01/10	34,896,156.88	34,896,156.88	-	(285,097.76)	34,611,059.12	34,611,059.12
TexPool	0.15%	04/01/10	26,942,945.44	26,942,945.44	-	(2,244,971.23)	24,697,974.21	24,697,974.21
Texas Daily	0.14%	04/01/10	27,158,287.71	27,158,287.71	-	(2,744,823.52)	24,413,464.19	24,413,464.19
Certificate of Deposit	1.17%	11/28/11	244,000.00	244,000.00	-	(244,000.00)	-	-
Certificate of Deposit	0.75%	01/16/12	246,000.00	246,000.00	-	-	246,000.00	246,000.00
Certificate of Deposit	1.35%	03/09/12	95,000.00	95,000.00	-	-	95,000.00	95,000.00
Certificate of Deposit	1.35%	03/09/12	95,000.00	95,000.00	-	-	95,000.00	95,000.00
Certificate of Deposit	1.35%	03/09/12	95,000.00	95,000.00	-	-	95,000.00	95,000.00
Certificate of Deposit	1.35%	03/09/12	95,000.00	95,000.00	-	-	95,000.00	95,000.00
Certificate of Deposit	1.35%	03/09/12	95,000.00	95,000.00	-	-	95,000.00	95,000.00
Certificate of Deposit	1.35%	03/09/12	95,000.00	95,000.00	-	-	95,000.00	95,000.00
Certificate of Deposit	1.35%	03/09/12	95,000.00	95,000.00	-	-	95,000.00	95,000.00
Certificate of Deposit	1.35%	03/09/12	95,000.00	95,000.00	-	-	95,000.00	95,000.00
Certificate of Deposit	1.35%	03/09/12	95,000.00	95,000.00	-	-	95,000.00	95,000.00
Certificate of Deposit	1.35%	03/09/12	95,000.00	95,000.00	-	-	95,000.00	95,000.00
Certificate of Deposit	1.35%	03/09/12	95,000.00	95,000.00	-	-	95,000.00	95,000.00
Certificate of Deposit	1.35%	03/09/12	95,000.00	95,000.00	-	-	95,000.00	95,000.00
Certificate of Deposit	1.35%	03/09/12	95,000.00	95,000.00	-	-	95,000.00	95,000.00
Certificate of Deposit	1.35%	03/09/12	95,000.00	95,000.00	-	-	95,000.00	95,000.00
Certificate of Deposit	1.35%	03/09/12	95,000.00	95,000.00	-	-	95,000.00	95,000.00
Certificate of Deposit	1.35%	03/09/12	95,000.00	95,000.00	-	-	95,000.00	95,000.00
Certificate of Deposit	1.35%	03/09/12	95,000.00	95,000.00	-	-	95,000.00	95,000.00
Certificate of Deposit	1.35%	03/09/12	95,000.00	95,000.00	-	-	95,000.00	95,000.00
Certificate of Deposit	1.35%	03/09/12	95,000.00	95,000.00	-	-	95,000.00	95,000.00
Certificate of Deposit	1.35%	03/09/12	95,000.00	95,000.00	-	-	95,000.00	95,000.00
Certificate of Deposit	1.35%	03/09/12	95,000.00	95,000.00	-	-	95,000.00	95,000.00
Certificate of Deposit	1.35%	03/09/12	95,000.00	95,000.00	-	-	95,000.00	95,000.00
Certificate of Deposit	1.35%	03/09/12	95,000.00	95,000.00	-	-	95,000.00	95,000.00
Certificate of Deposit	1.35%	03/09/12	95,000.00	95,000.00	-	-	95,000.00	95,000.00
Certificate of Deposit	1.35%	03/09/12	95,000.00	95,000.00	-	-	95,000.00	95,000.00
Certificate of Deposit	1.35%	03/09/12	95,000.00	95,000.00	-	-	95,000.00	95,000.00
Certificate of Deposit	1.35%	03/09/12	95,000.00	95,000.00	-	-	95,000.00	95,000.00
Certificate of Deposit	1.35%	03/09/12	95,000.00	95,000.00	-	-	95,000.00	95,000.00
Certificate of Deposit	1.05%	03/11/12	97,575.75	97,575.75	-	-	97,575.75	97,575.75
Certificate of Deposit	0.40%	05/04/12	2,000,000.00	2,000,000.00	-	-	2,000,000.00	2,000,000.00
Certificate of Deposit	0.70%	05/27/12	246,775.34	246,775.34	-	-	246,775.34	246,775.34
Certificate of Deposit	1.12%	06/01/12	245,000.00	245,000.00	-	-	245,000.00	245,000.00
Certificate of Deposit	0.45%	07/26/12	2,000,000.00	2,000,000.00	-	-	2,000,000.00	2,000,000.00

## Adjusted Book Value Comparison

Security Description	Coupon/ Yield	Maturity Date	September 30, 2011				December 31, 2011		
			Par Value	Adjusted Book Value	Purchase/ Adjustment	Maturity/Call/ Adjustment	Par Value	Adjusted Book Value	
Certificate of Deposit	0.45%	07/26/12	4,000,000.00	4,000,000.00	-	-	4,000,000.00	4,000,000.00	
Certificate of Deposit	1.06%	08/23/12	5,000,000.00	5,000,000.00	-	-	5,000,000.00	5,000,000.00	
Certificate of Deposit	1.45%	08/23/12	3,500,000.00	3,500,000.00	-	-	3,500,000.00	3,500,000.00	
Certificate of Deposit	1.10%	09/09/12	245,000.00	245,000.00	-	-	245,000.00	245,000.00	
Certificate of Deposit	35.00%	09/13/12	5,000,000.00	5,000,000.00	-	-	5,000,000.00	5,000,000.00	
Certificate of Deposit	1.00%	10/13/12	151,804.10	151,804.10	-	-	151,804.10	151,804.10	
Certificate of Deposit	0.95%	01/13/13	5,047,593.52	5,047,593.52	-	-	5,047,593.52	5,047,593.52	
Certificate of Deposit	1.45%	08/22/13	1,500,000.00	1,500,000.00	-	-	1,500,000.00	1,500,000.00	
Certificate of Deposit	0.64%	11/29/13	-	-	244,000.00	-	244,000.00	244,000.00	
FHLB Bond	1.00%	02/27/12	8,000,000.00	8,001,005.00	-	(616.40)	8,000,000.00	8,000,388.60	
FHLB Bond	1.30%	07/26/12	8,725,000.00	8,728,309.84	-	(1,015.01)	8,725,000.00	8,727,294.83	
FHLB Bond	2.00%	09/14/12	17,000,000.00	17,097,766.67	-	(25,698.67)	17,000,000.00	17,072,068.00	
FHLB Bond	0.80%	04/19/13	-	-	11,058,734.93	-	11,000,000.00	11,058,734.93	
FHLB Bond	1.00%	09/13/13	-	-	10,107,679.84	-	10,000,000.00	10,107,679.84	
FHLB Bond	2.38%	03/14/14	15,000,000.00	15,267,842.56	-	(27,501.69)	15,000,000.00	15,240,340.87	
FHLB Bond	1.38%	09/12/14	10,000,000.00	10,040,746.23	-	(3,477.41)	10,000,000.00	10,037,268.82	
FHLB Bond	2.75%	03/13/15	7,565,000.00	7,730,715.49	-	(12,099.86)	7,565,000.00	7,718,615.63	
FHLMC Bond	0.38%	11/30/12	5,000,000.00	4,999,359.50	138.00	-	5,000,000.00	4,999,497.50	
FHLMC Bond	1.72%	04/11/13	3,000,000.00	3,053,974.35	-	(8,883.08)	3,000,000.00	3,045,091.27	
FHLMC Bond	4.50%	07/15/13	7,000,000.00	7,495,776.06	-	(69,742.20)	7,000,000.00	7,426,033.86	
FHLMC Bond	4.13%	09/27/13	15,000,000.00	15,824,911.51	-	(104,247.06)	15,000,000.00	15,720,664.45	
FHLMC Bond	0.60%	10/25/13	-	-	12,994,095.76	-	13,000,000.00	12,994,095.76	
FHLMC Bond	1.15%	07/28/14	11,000,000.00	10,988,390.94	-	(10,988,390.94)	-	-	
FHLMC Bond	3.00%	07/28/14	11,000,000.00	11,618,679.85	-	(55,153.63)	11,000,000.00	11,563,526.22	
FHLMC Bond	1.75%	09/10/15	17,000,000.00	17,070,540.63	-	(4,503.64)	17,000,000.00	17,066,036.99	
FHLMC Bond	1.75%	09/10/15	13,000,000.00	12,780,924.34	13,986.79	-	13,000,000.00	12,794,911.13	
FNMA Bond	1.00%	04/04/12	6,000,000.00	5,996,585.15	1,680.03	-	6,000,000.00	5,998,265.18	
FNMA Bond	1.88%	04/20/12	6,000,000.00	6,049,630.15	-	(22,492.48)	6,000,000.00	6,027,137.67	
FNMA Bond	4.38%	09/15/12	15,000,000.00	15,579,023.44	-	(151,766.83)	15,000,000.00	15,427,256.61	
FNMA Bond	0.50%	10/30/12	13,000,000.00	13,017,122.70	-	(3,978.00)	13,000,000.00	13,013,144.70	
FNMA Bond	1.25%	08/20/13	10,000,000.00	10,110,144.94	-	(14,685.99)	10,000,000.00	10,095,458.95	
FNMA Bond	0.55%	09/27/13	-	-	8,004,944.23	-	8,000,000.00	8,004,944.23	
FNMA Bond	Step	10/24/13	-	-	5,000,000.00	-	5,000,000.00	5,000,000.00	
FNMA Bond	0.65%	08/28/14	-	-	9,085,000.00	-	9,085,000.00	9,085,000.00	
FNMA Bond	5.00%	4/15/2015	15,000,000.00	16,562,885.32	-	(111,202.98)	15,000,000.00	16,451,682.34	
<b>TOTAL</b>			<b>\$ 360,195,261.51</b>	<b>\$ 364,919,596.18</b>	<b>\$ 56,843,184.50</b>	<b>\$ (17,124,348.38)</b>	<b>\$ 400,338,293.92</b>	<b>\$ 404,638,432.30</b>	



## Market Value Comparison

Security Description	Coupon/ Yield	Maturity Date	September 30, 2011		Qtr to Qtr Change (1)	December 31, 2011	
			Par Value	Market Value		Par Value	Market Value
Certificate of Deposit	1.45%	08/23/12	3,500,000.00	3,500,000.00	-	3,500,000.00	3,500,000.00
Certificate of Deposit	1.10%	09/09/12	245,000.00	245,000.00	-	245,000.00	245,000.00
Certificate of Deposit	35.00%	09/13/12	5,000,000.00	5,000,000.00	-	5,000,000.00	5,000,000.00
Certificate of Deposit	1.00%	10/13/12	151,804.10	151,804.10	-	151,804.10	151,804.10
Certificate of Deposit	0.95%	01/13/13	5,047,593.52	5,047,593.52	-	5,047,593.52	5,047,593.52
Certificate of Deposit	1.45%	08/22/13	1,500,000.00	1,500,000.00	-	1,500,000.00	1,500,000.00
Certificate of Deposit	0.64%	11/29/13	-	-	244,000.00	244,000.00	244,000.00
FHLB Bond	1.00%	02/27/12	8,000,000.00	8,001,005.00	9,547.00	8,000,000.00	8,010,552.00
FHLB Bond	1.30%	07/26/12	8,725,000.00	8,728,309.84	49,598.56	8,725,000.00	8,777,908.40
FHLB Bond	2.00%	09/14/12	17,000,000.00	17,097,766.67	109,905.33	17,000,000.00	17,207,672.00
FHLB Bond	0.80%	04/19/13	-	-	11,068,002.00	11,000,000.00	11,068,002.00
FHLB Bond	1.00%	09/13/13	-	-	10,101,720.00	10,000,000.00	10,101,720.00
FHLB Bond	2.38%	03/14/14	15,000,000.00	15,267,842.56	346,272.44	15,000,000.00	15,614,115.00
FHLB Bond	1.38%	09/12/14	10,000,000.00	10,040,746.23	165,213.77	10,000,000.00	10,205,960.00
FHLB Bond	2.75%	03/13/15	7,565,000.00	7,730,715.49	321,773.11	7,565,000.00	8,052,488.60
FHLMC Bond	0.38%	11/30/12	5,000,000.00	4,999,359.50	10,375.50	5,000,000.00	5,009,735.00
FHLMC Bond	1.72%	04/11/13	3,000,000.00	3,053,974.35	(265.35)	3,000,000.00	3,053,709.00
FHLMC Bond	4.50%	07/15/13	7,000,000.00	7,495,776.06	(50,716.06)	7,000,000.00	7,445,060.00
FHLMC Bond	4.13%	09/27/13	15,000,000.00	15,824,911.51	138,208.49	15,000,000.00	15,963,120.00
FHLMC Bond	0.60%	10/25/13	-	-	13,001,794.00	13,000,000.00	13,001,794.00
FHLMC Bond	1.15%	07/28/14	11,000,000.00	10,988,390.94	(10,988,390.94)	-	-
FHLMC Bond	3.00%	07/28/14	11,000,000.00	11,618,679.85	53,662.15	11,000,000.00	11,672,342.00
FHLMC Bond	1.75%	09/10/15	17,000,000.00	17,070,540.63	468,954.37	17,000,000.00	17,539,495.00
FHLMC Bond	1.75%	09/10/15	13,000,000.00	12,780,924.34	631,630.66	13,000,000.00	13,412,555.00
FNMA Bond	1.00%	04/04/12	6,000,000.00	5,996,585.15	17,208.85	6,000,000.00	6,013,794.00
FNMA Bond	1.88%	04/20/12	6,000,000.00	6,049,630.15	(17,812.15)	6,000,000.00	6,031,818.00
FNMA Bond	4.38%	09/15/12	15,000,000.00	15,579,023.44	(141,803.44)	15,000,000.00	15,437,220.00
FNMA Bond	0.50%	10/30/12	13,000,000.00	13,017,122.70	13,908.30	13,000,000.00	13,031,031.00
FNMA Bond	1.25%	08/20/13	10,000,000.00	10,110,144.94	29,815.06	10,000,000.00	10,139,960.00
FNMA Bond	0.55%	09/27/13	-	-	7,990,464.00	8,000,000.00	7,990,464.00
FNMA Bond	Step	10/24/13	-	-	5,002,675.00	5,000,000.00	5,002,675.00
FNMA Bond	0.65%	08/28/14	-	-	9,074,624.93	9,085,000.00	9,074,624.93
FNMA Bond	5.00%	4/15/2015	15,000,000.00	16,562,885.32	494,679.68	15,000,000.00	17,057,565.00
<b>TOTAL</b>			<b>\$ 360,195,261.51</b>	<b>\$ 364,919,596.18</b>	<b>\$ 42,959,077.67</b>	<b>\$ 400,338,293.92</b>	<b>\$ 407,878,673.85</b>

**Allocation****December 31, 2011**

<b>Book Value</b>	<b>% Equity in Treasury Pool</b>	<b>Book Value Fund Allocation</b>
General Fund	13.06%	52,828,093.50
Debt Service Funds	3.49%	14,104,392.93
Capital Projects Funds	37.88%	153,279,890.43
Enterprise Funds	17.10%	69,183,210.22
Special Revenue Funds	8.31%	33,624,004.61
Internal Service Funds	15.05%	60,912,507.86
Fiduciary Funds	5.12%	20,706,332.75
<b>Totals</b>	<b>100.00%</b>	<b>404,638,432.30</b>

<b>Market Value</b>	<b>% Equity in Treasury Pool</b>	<b>Market Value Fund Allocation</b>
General Fund	13.06%	53,251,127.42
Debt Service Funds	3.49%	14,217,337.32
Capital Projects Funds	37.88%	154,507,316.77
Enterprise Funds	17.10%	69,737,211.75
Special Revenue Funds	8.31%	33,893,257.08
Internal Service Funds	15.05%	61,400,279.71
Fiduciary Funds	5.12%	20,872,143.79
<b>Totals</b>	<b>100.00%</b>	<b>407,878,673.85</b>

Allocations are based upon fund equity in the Treasury Pool at the end of the period.



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		2/13/12		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): <b>Katherine Crumbley x7479</b>				
<b>CAPTION</b>				
A Resolution of the City of Plano, Texas repealing Resolution No. 2011-6-23(R) approving the terms and conditions of an agreement by and between the City of Plano, Texas, Collin County, Texas, Internap Network Services Corporation, a Delaware corporation and Behringer Harvard 1221 Coit, LP, a Texas limited partnership; providing for a business personal property and real property tax abatement; and authorizing its execution by the City Manager or his authorized designee; and providing an effective date.				
<b>FINANCIAL SUMMARY</b>				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: <b>2011-2012</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
<b>BALANCE</b>	0	0	0	0
<b>FUND(s):     ECONOMIC DEVELOPMENT FUND</b>				
<b>COMMENTS:</b> Strategic Plan Goal: Providing Economic Development Incentives relates to the City's goal of Strong Local Economy.				
<b>SUMMARY OF ITEM</b>				
This repeals the resolution approving the Tax Abatement Agreement for Reinvestment Zone 123.				
List of Supporting Documents: Resolution			Other Departments, Boards, Commissions or Agencies	

**A Resolution of the City of Plano, Texas repealing Resolution No. 2011-6-23(R) approving the terms and conditions of an agreement by and between the City of Plano, Texas, Collin County, Texas, Internap Network Services Corporation, a Delaware corporation and Behringer Harvard 1221 Coit, LP, a Texas limited partnership; providing for a business personal property and real property tax abatement; and authorizing its execution by the City Manager or his authorized designee; and providing an effective date.**

**WHEREAS**, the City Council adopted Resolution No. 2011-6-23(R), on June 27, 2011, approving the terms and conditions of an agreement by and between the City of Plano, Texas, Collin County, Texas, Internap Network Services Corporation, a Delaware corporation and Behringer Harvard 1221 Coit, LP, a Texas limited partnership; providing for a business personal property and real property tax abatement; and

**WHEREAS**, the parties have indicated that they do not desire to pursue such Tax Abatement Agreement; and

**WHEREAS**, the City Council finds that since the parties have indicated that they do not desire to pursue the Tax Abatement Agreement, Resolution No. 2011-6-23(R) should be repealed.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:**

**Section I.** The City Council hereby repeals Resolution No. 2011-6-23(R).

**Section II.** This Resolution shall become effective immediately upon its passage and publication as required by law.

**DULY PASSED AND APPROVED** this the 13<sup>th</sup> day of February, 2012.

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Phil Dyer, MAYOR

ATTEST:

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Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

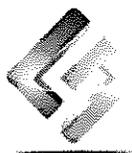
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Diane C. Wetherbee, CITY ATTORNEY



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		02/13/12			
Department:		Legal			
Department Head		Diane Wetherbee			
Agenda Coordinator (include phone #): <b>Betsy Allen - 7545</b>					
<b>CAPTION</b>					
A Resolution of the City Council of the City of Plano, Texas, appointing James D. Shields and Lori A. Leu to serve for two year terms as investigators as required by Section 2-104 of the Code of Conduct of the City of Plano; and providing an effective date.					
<b>FINANCIAL SUMMARY</b>					
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	<b>2011-12</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
	<b>2012-13</b>				
Budget		0	0	0	0
Encumbered/Expended Amount		0	0	0	0
This Item		0	0	0	0
BALANCE		0	0	0	0
<b>FUND(s):    N/A</b>					
<b>COMMENTS:</b> This item has no fiscal impact.					
STRATEGIC PLAN GOAL: Appointing Ethics investigators relates to the City's goal of Financially Strong City with Service Excellence.					
<b>SUMMARY OF ITEM</b>					
This Resolution approves the appointment of James D. Shields and Lori A. Leu to serve as investigators as required by the Code of Conduct by a City official in the event the Council deems a full investigation is required. Mr. Shields and Ms. Leu have been appointed previously and are willing to be reappointed. They are both familiar with the City's Code of Ethics.					
List of Supporting Documents: See attached			Other Departments, Boards, Commissions or Agencies n/a		



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## About Us

### James D. Shields

Katherine D. Hoke

Bart Higgins

Philip T. Kingston

Danise A. McMahon

Bridgett B. Zoltowski

Alana M. Gilhang

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### James D. Shields, Principal

James D. Shields has practiced law for 28 years, with a primary focus in complex commercial business litigation and representation of financial institutions and financial intermediaries. He counsels clients on corporate and commercial litigation, as well as contract, real estate, and insurance litigation.

An entrepreneur in strategic conflict management and implementation of resolution plans for creditors and financial intermediaries, Shields is a principal with Shields Legal Group, a successful alternative legal services company.

Based on its unique approach to providing legal services, he selected seasoned attorneys with business backgrounds to provide strategic legal strategies and advice aligned with the ultimate goals and strategy of a business. Shields has brought over 38 cases to a successful close through this integrated process, winning fans from law firms and clients alike. In addition, he structured a comprehensive technology platform within SLG to provide clients secure, accurate and efficient document management services.

Shields is also an investor and mentor of Tech Multiplier, a group of successful businessmen dedicated to helping startups succeed. He is also a member of the Dallas Bar Association and American Bar Association.

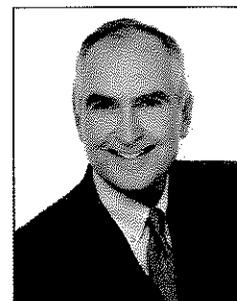
Shields received his J.D. at St. Mary's University School of Law in San Antonio in 1983, where he was the editor of St. Mary's University Law Journal and a member of the Order of Barristers. He pursued his undergraduate degree in language arts at St. Mary's University in 1980.

Shields is admitted to practice law in all state and county courts in the State of Texas and in the U.S. District Courts for the Northern, Eastern, and Western districts of Texas.

[jshields@shieldslegal.com](mailto:jshields@shieldslegal.com)

972-726-3467

[View»](#)



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## LORI A. LEU

## LORI A. LEU | ESTATE PLANNING &amp; ELDER LAW

## PRACTICE AREAS

- ELDER LAW
- ESTATE PLANNING
- GUARDIANSHIP
- PROBATE & ESTATE ADMINISTRATION



Growing up in a small town in Kansas, strong values and ties to the community were instilled in Lori Leu. After practicing as a civil litigation attorney for more than 20 years, Lori longed to focus on a practice area that would more directly benefit members of the community in which she lives. While searching for direction, Lori was approached by family members with questions regarding

elder law issues. She then realized that assisting individuals who most need advice, especially when faced with confusing and sometimes overwhelming issues, was the calling she was seeking. As a result, Lori changed her practice to focus on legal issues affecting seniors and long-term planning, from simple wills to more complicated estate planning, financing of long-term care, including Medicaid eligibility, advance directives, guardianships, and estate administration.

Lori graduated from Kansas State University with an honors degree in Interdisciplinary Social Sciences, *summa cum laude*, in 1984. She continued on to receive her law degree from Harvard University in 1987, and is licensed to practice in Texas, Kansas, and Missouri. Lori lives with her husband and two children in Plano, Texas.

## RELATED RESOURCES

## NEWS

## ARTICLES

*"Lori is the type of attorney other attorneys will call when we need her expertise. She has the intellect to handle complex matters, plus the ethical standards that let you know the client will always be first."*

- David M.

**Memberships & Activities**

City of Plano Ethics Investigator  
College of the State Bar of Texas  
Collin County Bar Association  
Estate Planning & Probate Section - President-elect and Board of Directors  
Dallas Bar Association  
Dallas Bar Foundation - Fellow

Estate Planning Council of North Texas  
Board of Directors  
Kansas Bar Association  
National Academy of Elder Law Attorneys (NAELA)  
Missouri Bar Association  
Plano Bar Association  
Senior Adult Services - Board of Directors  
State Bar of Texas

---

*Plano, Texas Estate Planning and Elder Law Attorney Lori Leu assists clients with Estate Planning, Wills, Trusts, Special Needs Planning, Probate and Estate Administration, Elder Law, Medicaid Planning, Powers of Attorney and Advance Directives and Guardianships in Plano, Texas and the greater Dallas area, including Addison, Allen, Anna, Carrollton, Celina, The Colony, Dallas, Fairview, Farmers Branch, Farmersville, Frisco, Garland, Lewisville, Lucas, McKinney, Melissa, Murphy, Parker, Plano, Princeton, Prosper, Richardson, Sachse, Sherman, Van Alstyne, and Wylie.*

2415 Coit Road | Suite C | Plano, TX 75075 | 972.996.2540 office | 972.996.2544 fax | [info@leulawfirm.com](mailto:info@leulawfirm.com)

**Disclaimer**

**A Resolution of the City Council of the City of Plano, Texas, appointing James D. Shields and Lori A. Leu to serve for two year terms as investigators as required by Section 2-104 of the Code of Conduct of the City of Plano; and providing an effective date.**

**WHEREAS**, pursuant to Sec. 2-104 of the Code of Ordinances, the City Council shall appoint attorneys to serve as investigators as required by the Code of Conduct of the City of Plano by a City official; and

**WHEREAS**, James D. Shields and Lori A. Leu have agreed to serve as investigators for a two year period from February 15, 2012 to February 14, 2014.

**WHEREAS**, the Council finds that both Mr. Shields and Ms. Leu are qualified to serve as investigators for code of conduct violations.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS THAT:**

**Section I.** James D. Shields and Lori A. Leu are hereby appointed by the City Council to serve as investigators in determining violations of the Code of Conduct of the City of Plano by a City official. Their terms are from February 15, 2012 to February 14, 2014.

**Section II.** This Resolution shall become effective immediately after its passage.

**DULY PASSED AND APPROVED** this the 13<sup>th</sup> day of February, 2012.

---

Phil Dyer, MAYOR

ATTEST:

---

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

---

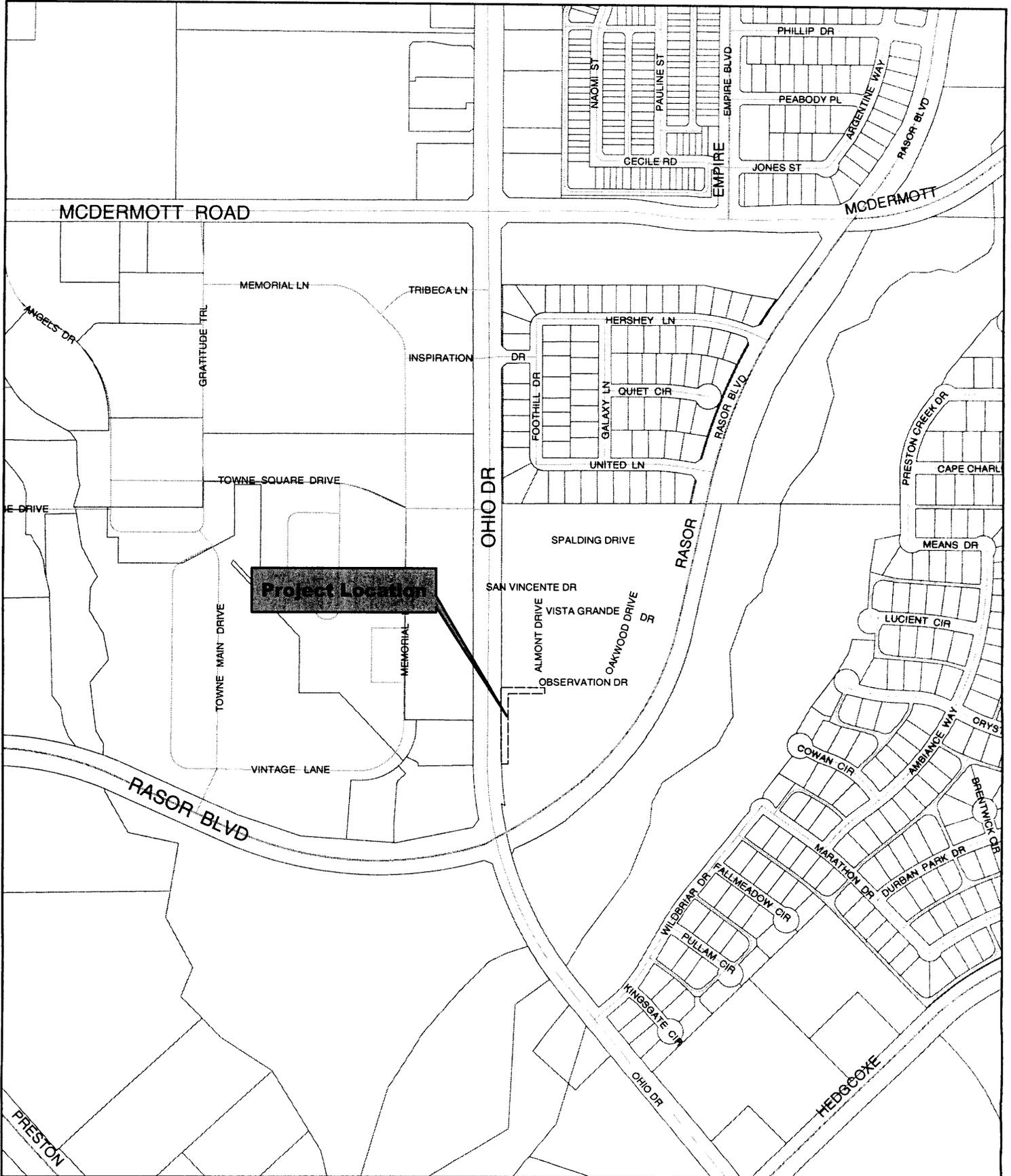
Diane C. Wetherbee, CITY ATTORNEY



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		2/13/12			
Department:		Public Works			
Department Head		Gerald Cosgrove			
Agenda Coordinator (include phone #): <b>Irene Pegues (X-7152)</b> <b>Proj. #6135</b>					
<b>CAPTION</b>					
An ordinance of the City of Plano, Texas, abandoning all right, title and interest of the City, in that certain 15-foot wide Sanitary Sewer Easement recorded in Instrument No. 20111026001150700, Official Public Records of Collin County, Texas, and being situated in the Collin County School Survey, Abstract No. 153, which is located within the city limits of Plano, Collin County, Texas; quitclaiming all right, title and interest of the City in such easement to the abutting property owner, Florida Etoile, Inc., to the extent of its interest; authorizing the City Manager or his authorized designee, to execute any documents deemed necessary; and providing an effective date.					
<b>FINANCIAL SUMMARY</b>					
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	<b>2011-2012</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget		0	0	0	0
Encumbered/Expended Amount		0	0	0	0
This Item		0	0	0	0
<b>BALANCE</b>		<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
FUND(S):    N/A					
<b>COMMENTS:</b> This item has no fiscal impact. <b>STRATEGIC PLAN GOAL:</b> Abandoning all right, title and interest of the City to the easement relates to the City's Goal of Financially Strong City with Service Excellence.					
<b>SUMMARY OF ITEM</b>					
This easement is abandoned and replaced by a new 15' Sanitary Sewer Easement recorded in Instrument No. 20120120000069400, Official Public Records of Collin County, Texas, to avoid conflict with existing Oncor power poles and guy wires.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Location Map			N/A		

# Easement Abandonment Project # 6135



**Location Map**

**An ordinance of the City of Plano, Texas, abandoning all right, title and interest of the City, in that certain 15-foot wide Sanitary Sewer Easement recorded in Instrument No. 20111026001150700, Official Public Records of Collin County, Texas, and being situated in the Collin County School Survey, Abstract No. 153, which is located within the city limits of Plano, Collin County, Texas; quitclaiming all right, title and interest of the City in such easement to the abutting property owner, Florida Etoile, Inc., to the extent of its interest; authorizing the City Manager or his authorized designee, to execute any documents deemed necessary; and providing an effective date.**

**WHEREAS**, the City Council of the City of Plano has been requested to abandon all right, title and interest of the City in that certain 15-foot wide Sanitary Sewer Easement recorded in Instrument No. 20111026001150700, Official Public Records of Collin County, Texas (hereinafter called "Easement") being situated in the Collin County School Land Survey, Abstract No. 153, which is located within the city limits of Plano, Collin County, Texas, and which is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference; and

**WHEREAS**, the Property Owner has filed with the City a Petition for Abandonment, a copy of which is attached hereto as Exhibit "B" and made a part hereof by reference; and

**WHEREAS**, the Public Works Department has determined that there will be no detrimental effect on the City if the Easement is abandoned and quitclaimed to the abutting Property Owner; and has advised that the Easement should be abandoned;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:**

**Section I.** All the right, title and interest of the City of Plano, Texas, in and to the Easement is hereby abandoned, and all right, title and interest of the City in and to the Easement is hereby quitclaimed to the abutting Property Owner in accordance with its respective interest. A certified copy of this Ordinance may be recorded in the Collin County Land Records to reflect this abandonment and quitclaim. The City Manager or his authorized designee, is hereby authorized to execute on behalf of the City of Plano, Texas, any instruments necessary to complete the abandonment and quitclaim of the Easement by the City of Plano.

**Section II.** The abandonment and quitclaim is without prejudice to any and all improvements, facilities, equipment or lines of any public utility, municipal or otherwise, if any, which are presently located within any portion of the Easement. Any such utility shall have the continued right to locate, maintain, repair, reconstruct, preserve or relocate improvements, facilities, equipment or lines in such portion of the Easement.

**Section III.** The City Council hereby finds and determines that the abandonment of the Easement is in the public interest of the City of Plano, Texas, and its citizens, and will inure to the benefit of the public generally.

**Section IV.** This Ordinance shall become effective immediately upon its passage as set forth below.

**DULY PASSED AND APPROVED** this the 13<sup>th</sup> day of February, 2012.

\_\_\_\_\_  
Phil Dyer, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

**15' SANITARY SEWER EASEMENT DESCRIPTION**

BEING a 0.154 acre tract or parcel of land situated in the Collin County School Land Survey, Abstract No. 153 in the City of Plano, Collin County, Texas and being a portion of that certain 14.929 acre tract conveyed to Florida Etoile, Inc. by deed recorded in Volume 5670, Page 2509 of the Deed Records of Collin County, Texas, said 0.154 acre tract being more particularly described by metes and bounds as follows:

COMMENCING at a 1/2 inch iron rod with red plastic cap stamped "WAI" set for corner at the intersection of the east right-of-way line of Ohio Drive (variable width R.O.W.) and the Northwesterly right-of-way line of Rasor Boulevard (variable width R.O.W.), said iron rod being the northwesterly end of a corner clip at said intersection and the beginning of a non-tangent curve to the right having a radius of 1345.00 feet, a central angle of 07 deg 34 min 07 sec, and a chord which bears North 03 deg 26 min 07 sec West, 177.54 feet;

THENCE departing said corner clip and along the East right-of-way line of said Ohio Drive and said non-tangent curve to the right, an arc distance of 177.67 feet to the POINT OF BEGINNING, said point also being the beginning of a curve to the right having a radius of 1,345.00 feet, a central angle of 00 deg 27 min 05 sec, a chord bearing of North 00 deg 34 min 29 sec East, and a chord length of 10.60 feet;

THENCE continuing along the East right-of-way line of said Ohio Drive and said curve to the right, an arc distance of 10.60 feet to a 5/8-inch iron rod with a plastic cap stamped "JDJR" found for corner;

THENCE North 00 deg 48 min 02 sec East, continuing along the east line of said Ohio Drive, a distance of 281.81 feet to a point for corner;

THENCE South 89 deg 23 min 12 sec East, departing the east right-of-way line of said Ohio Drive, a distance of 170.16 feet to a point for corner;

THENCE South 00 deg 36 min 48 sec West, a distance of 15.00 feet to a point for corner;

THENCE North 89 deg 23 min 12 sec West, a distance of 155.21 feet to a point for corner;

THENCE South 00 deg 48 min 02 sec West, a distance of 266.86 feet to a point for corner and the beginning of a curve to the left having a radius of 1330.00 feet and a chord which bears South 00 deg 34 min 23 sec West, 10.56 feet;

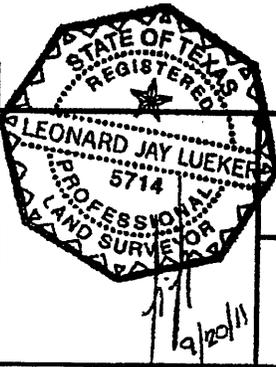
THENCE along said curve to the left, an arc distance of 10.56 feet through a central angle of 00 deg 27 min 18 sec to a point for corner;

THENCE North 89 deg 19 min 54 sec West, a distance of 15.00 feet to the POINT OF BEGINNING.

CONTAINING within these metes and bounds 0.154 acres or 6,714 square feet of land more or less.

Bearings contained herein are based upon an on the ground survey performed in the field on the 14th day of February, 2011 utilizing a GPS measurement of S89°21'37"E (WGS84) (plat S89°51'27"E, along the southerly line of Regency Park Addition, an addition to the City of Plano according to the plat thereof recorded in Cabinet 2006, Page 402, Plat Records, Collin County, Texas).

	<b>Winkelmann &amp; Associates, Inc.</b>
	<small>CONSULTING CIVIL ENGINEERS ■ SURVEYORS 6738 MILLCREST PLAZA DRIVE, SUITE 323 DALLAS, TEXAS 75230 Texas Engineers Registration No. 82 Texas Surveyors No. 700895-00 COPYRIGHT © 2010, Winkelmann &amp; Associates, Inc.</small>
Scale : N/A	
Date : 04.18.2011	
Dwg. File : ESMT-EXHIBITS	
Project No. : 59002	



<b>EXHIBIT A</b> <b>15' SANITARY SEWER EASEMENT</b> <b>0.154 ACRES</b>
<b>HSM DEVELOPMENT</b> <b>5001 SPRING VALLEY ROAD,</b> <b>SUITE 1100-W</b> <b>DALLAS, TX 75244</b>

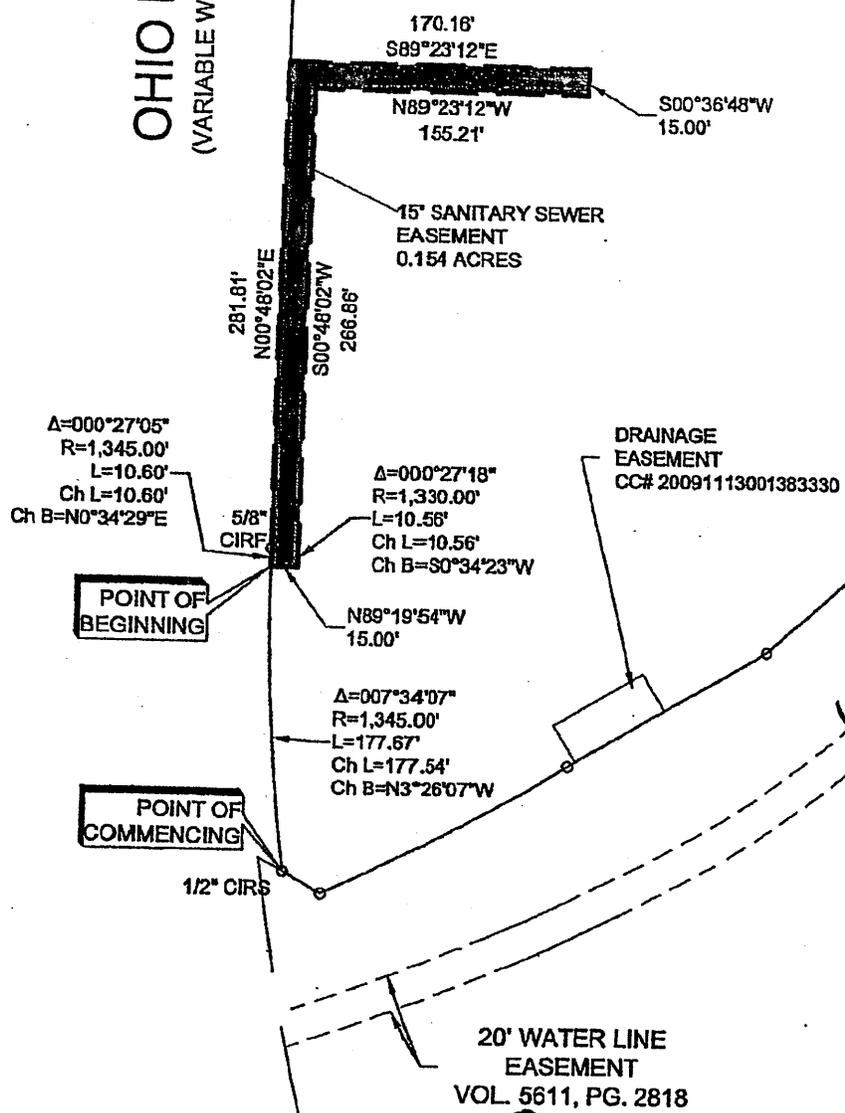
SHEET <b>1</b> OF <b>2</b>
-------------------------------------

14.929 ACRES  
 (650,323 SQ. FT.)  
 PORTION OF FLORIDA ETOILE,  
 INC. TRACT  
 VOL. 5670, PG. 2509

**OHIO DRIVE**  
 (VARIABLE WIDTH R.O.W.)

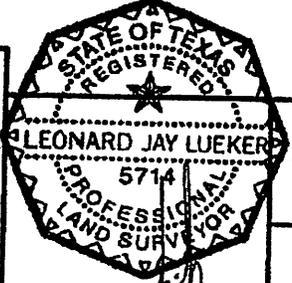
**RASOR BLVD.**  
 (variable width R.O.W.)

CITY OF PLANO, TEXAS  
 VOL. 5843, PG. 3243



POINT OF BEGINNING

POINT OF COMMENCING



**Winkelmann & Associates, Inc.**  
 CONSULTING CIVIL ENGINEERS SURVEYORS  
 6750 MILLCREST PLAZA DRIVE, SUITE 315 DALLAS, TEXAS 75230  
 Texas Engineers Registration No. 89  
 Texas Surveyors No. 100686-00  
 COPYRIGHT © 2010, Winkelmann & Associates, Inc.

Scale : 1" = 100'  
 Date : 04.18.2011  
 Dwg. File : ESMT-EXHIBITS  
 Project No. : 59002

EXHIBIT A  
 15' SANITARY SEWER EASEMENT  
 0.154 ACRES  
 HSM DEVELOPMENT  
 5001 SPRING VALLEY ROAD,  
 SUITE 1100-W  
 DALLAS, TX 75244

SHEET  
**2**  
 OF  
**2**

## EXHIBIT "B"

### PETITION FOR ABANDONMENT

[For Easement Abandonment]

We, the undersigned, (hereinafter "Owners"), being all of the owners of real property abutting Florida Etoile, Inc. hereinafter called "Easement"), more particularly described by metes and bounds in the field note description attached hereto and incorporated herein as Exhibit "A-1" do hereby request that the City of Plano, Texas (called "City") abandon the Easement.

1. The Owners are requesting the abandonment of the Easement for the following reasons:  
**The easement needs to be relocated approximately 10' east of the existing easement to avoid any conflicts with an existing Oncor power pole and guy wire.**
2. The following public interest will be served as a result of the abandonment:  
**The proposed relocation of the sanitary sewer easement will allow for there to be no conflicts with the existing Oncor power pole and guy wire.**
3. Unless the City determines that this abandonment is exempt from payment of fair market value, the Owners agree to pay to the City the fair market value of the Easement as determined by an appraisal obtained by the City (called "Price"). The appraisal shall be conclusive as to the fair market value. The Owners shall reimburse the City for the cost of the appraisal and other costs incident to the abandonment (called "Costs"). The Price and Costs shall be paid to the City prior to the abandonment. Should the Plano City Council decide not to abandon the Easement, the Price shall be returned to the Owners, but the Costs shall be retained by the City. Each Owner's share of the Price and Costs shall be in the same proportion as their abutting ownership as hereinafter defined.
4. If the Owners are providing a replacement easement for the Easement requested to be abandoned herein, Owners will attach a metes and bounds description or plat identifying the replacement easement and attach same to this Petition as Exhibit "B-1".
5. The Owners hereby represent and affirm to the City that no other property owner, lessee, tenant or easement or license holder uses the Easement to access or to serve their property.
6. The Owners further agree to release, defend, indemnify and hold the City, its officers, agents and employees harmless from and against any and all claims, losses, demands, suits, judgments and costs, including reasonable and necessary attorney's fees and expenses, arising out of, related to or resulting from the abandonment of the Easement by City.

7. The Owners understand and agree that the abandonment is in the sole discretion of the Plano City Council. The Owners also understand and agree that the Easement will be abandoned to them in proportion to their abutting ownership. The abutting ownership will be determined by the number of linear feet of frontage adjacent to the Easement owned by each property owner. Based on the foregoing, the Owners hereby represent and affirm that they have searched the public land records and determined that the abutting ownership is in the following proportions:  
**100% of the easement abandonment will be to Florida Etoile, Inc.**
8. Owners shall also prepare a map or drawing showing the Easement to be abandoned along with a designation of all abutting property owners. This map or drawing shall be attached hereto and incorporated herein as **Exhibit "C-1"**.
9. Owners shall also prepare a separate field note description for each portion of the Easement to be released to each abutting property owner. This description shall be attached hereto and incorporated herein as **Exhibit "D-1"**.  
**Exhibit "D-1" is not applicable since 100% of the easement abandonment will be to Florida Etoile, Inc.**

[Remainder of page blank]

10. The undersigned officers and/or agents of the Owners hereby represent and affirm that they have the necessary authority to execute this Petition for Abandonment on behalf of the Owners.

Pablo Flaifel  
Name of Owner

13876 SW 56 ST #292  
Address

Miami, FL 33175  
City, State and Zip

Dated: 1/5/12

Pablo Flaifel  
Signature of Owner

**Contact Person for Property Owners:**

Name:

Pablo Flaifel

Phone No:

(305) 213-5195

---

**FOR DEPARTMENTAL USE ONLY**

The Easement to be abandoned is to one or more abutting property owners and is exempt from the requirement that fair market value be paid for the following reason(s):

- The Easement consists of narrow strips of land, or land that because of its shape, lack of access to public roads, or small area cannot be used independently under its current zoning or under applicable subdivision or other development code ordinances;
- The Easement consists of streets or alleys, owned in fee or used by easement;
- The Easement consists of land or a real property interest originally acquired for streets, rights-of-way, or easements that the City of Plano has decided to exchange with Owner for other land to be dedicated and used for streets, rights of way, easements, or other public purposes, including transactions partly for cash;
- The Easement contains land that the City wants to have developed by an independent foundation;
- The Easement is located within a reinvestment zone designated by law that the City desires to have developed under a project plan adopted by the municipality for the zone.

  
\_\_\_\_\_  
Public Works Department  
City of Plano, Texas



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		02/13/2012		
Department:		Police		
Department Head		Gregory W. Rushin		
Agenda Coordinator (include phone #): <b>Pam Haines, ext 2538</b>				
<b>CAPTION</b>				
An Ordinance of the City of Plano, Texas amending Chapter 14, Offenses-Miscellaneous, of the Code of Ordinances of the City of Plano to add a new Article XI, Vulnerable Road Users, to regulate the conduct of motor vehicle operators while passing cyclists on a highway or street and providing a penalty; and providing a repealer clause, a savings clause, a severability clause, a publication clause and an effective date.				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: <b>2011-12</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
<b>BALANCE</b>	0	0	0	0
<b>FUND(S):     GENERAL FUND</b>				
<b>COMMENTS:</b> Any revenue received from amending Chapter 14 of the Code of Ordinances with the addition of a new Article XI - Vulnerable Road Users, is undeterminable at this time. <b>STRATEGIC PLAN GOAL:</b> Amending the Code of Ordinances relates to the City's Goals of Financially Strong City with Service Excellence and Safe Large City.				
<b>SUMMARY OF ITEM</b>				
The City Council deems it necessary and in the best interest of the city and public safety to amend Chapter 14 of the Code of Ordinances of the City of Plano to add a new Article XI, Vulnerable Road Users, to regulate the conduct of motor vehicle operators while passing cyclists on a highway or street.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Memo, Ordinance				



P.O. Box 860358  
Plano, Texas 75086-0358  
972-424-5678  
Fax 972-424-0099  
<http://www.planopolice.org>

## MEMORANDUM

**DATE:** February 2, 2012  
**TO:** LaShon Ross, Assistant City Manager  
**FROM:** Gregory W. Rushin, Chief of Police *grushin*  
**SUBJECT:** Safe Passing Ordinance

---

In October 2011, members of the Plano Bicycle Association (PBA) approached Council and Mr. Glasscock about enacting a Safe Passing Ordinance. Mr. Warren Casteel of the PBA was directed to the police department and shortly thereafter a meeting was convened to explore this proposition. Mr. Casteel, Mr. Dudley Irby and Mr. Rudy Andrea represented the cyclists at the meeting which occurred at the main police station. Also present were Lloyd Neal of Traffic Engineering, Howard Curtis the Police Legal Advisor, Rene Jordan and Amy Fortenberry from Parks and Recreations and Lt. Christensen, Captain Schaffer and myself from the police department. We worked our way through a sample ordinance that was provided, discussing enforceability issues and conflicts with present state laws.

On December 12, 2011, I conducted a short presentation for council documenting the police department's research and results of the meetings with members of PBA. With direction from council to bring back a proposed ordinance, the police department worked with the PBA members and City Legal to prepare the best ordinance possible considering all enforceability and legal issues. The final proposed ordinance as prepared by Mr. Rodney Patten and Mr. Luke Williams of the City Legal Department is attached.

There is no financial impact to the City other than publication and education of the new ordinance.

**An Ordinance of the City of Plano, Texas amending Chapter 14, Offenses-Miscellaneous, of the Code of Ordinances of the City of Plano to add a new Article XI, Vulnerable Road Users, to regulate the conduct of motor vehicle operators while passing cyclists on a highway or street and providing a penalty; and providing a repealer clause, a savings clause, a severability clause, a publication clause and an effective date.**

**WHEREAS**, the City of Plano Police Department recently conducted a review of past accidents involving pedal-cyclist and determined that driver inattention was a major cause of most pedal-cyclist crashes within the City; and

**WHEREAS**, City staff recommends that City Council add a new Article XI, Vulnerable Road Users, to establish safe passing distances and to regulate the other conduct of motor vehicle operators while passing cyclists on a highway or street to enhance cyclist safety; and

**WHEREAS**, upon recommendation of staff and upon full review and consideration of all matters thereto, the City Council hereby finds and determines that it is necessary and in the best interest of the city and public safety to amend Chapter 14 of the Code of Ordinances of the City of Plano to add a new Article XI, Vulnerable Road Users, to regulate the conduct of motor vehicle operators while passing cyclists on a highway or street.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:**

**Section I.** A new Article XI, Vulnerable Road Users of Chapter 14, Offenses-Miscellaneous is hereby adopted to regulate the conduct of motor vehicle operators while passing cyclists on the highway or street to read in its entirety as follows:

**“ARTICLE XI. VULNERABLE ROAD USERS**

**Section 14-127. Definitions.** The following words and phrases as used in this section shall have the meanings as set forth in this subsection.

*“Vulnerable Road User”* shall mean a person operating a bicycle, hand cycle, unicycle, motor-driven cycle, or other human powered wheeled vehicle on a street or highway.

*“Safe Distance”* shall mean three (3) feet if the operator’s vehicle is a passenger car, or six (6) feet if the operator’s vehicle is a truck or a commercial motor vehicle.

**Section 14-128. Passing a vulnerable road user.**

- (a) An operator of a motor vehicle passing a vulnerable road user on a highway or street shall:

- (1) vacate the lane in which the vulnerable road user is located if the highway or street has two or more marked lanes running in the same direction; or
  - (2) pass the vulnerable road user at a safe distance.
- (b) An operator of a motor vehicle may not overtake and execute a right-hand turn in front of a vulnerable road user unless the operator is safely clear of the vulnerable road user, taking into account the speed at which the vulnerable road user is traveling and the braking requirements of the motor vehicle.
- (c) An operator or passenger of a motor vehicle may not knowingly throw or project any object or substance at or against a vulnerable road user.

**Section 14-129. Penalty.**

Any person, firm or corporation found to be violating any term or provision of this article shall be subject to a fine in accordance with Section 1-4(b) of the City Code of Ordinances for each offense.”

**Section II.** All provisions of the ordinances of the City of Plano in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Plano, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

**Section III.** The repeal of any ordinance or part of ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinance at the time of passage of this Ordinance.

**Section IV.** It is the intention of the City Council that this Ordinance, and every provision thereof, shall be considered severable and the invalidity or partial invalidity of any section, clause or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

**Section V.** This Ordinance shall become effective immediately upon its passage and publication as required by law.

**DULY PASSED AND APPROVED** this the 13th day of February, 2012.

---

Phil Dyer, MAYOR

ATTEST:

---

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

---

Diane C. Wetherbee, CITY ATTORNEY



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		2/13/12		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): <b>Katherine Crumbley x-7479</b>				
<b>CAPTION</b>				
An Ordinance of the City of Plano, Texas repealing Ordinance No. 2011-6-22 designating a certain area within the City of Plano, Texas, as Reinvestment Zone No. 123 for tax abatement consisting of a 7.255 acre tract of land located in the Martha McBride Survey, Abstract No. 553 Collin County in the City of Plano, Texas; and providing an effective date.				
<b>FINANCIAL SUMMARY</b>				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: <b>2011-2012</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
<b>BALANCE</b>	0	0	0	0
<b>FUND(s):     ECONOMIC DEVELOPMENT FUND</b>				
<b>COMMENTS:</b> Strategic Plan Goal: Providing Economic Development Incentives relates to the City's goal of Strong Local Economy.				
<b>SUMMARY OF ITEM</b>				
This repeals the Ordinance creating Reinvestment Zone 123.				
List of Supporting Documents: Ordinance			Other Departments, Boards, Commissions or Agencies	

**An Ordinance of the City of Plano, Texas repealing Ordinance No. 2011-6-22 designating a certain area within the City of Plano, Texas, as Reinvestment Zone No. 123 for tax abatement consisting of a 7.255 acre tract of land located in the Martha McBride Survey, Abstract No. 553, Collin County in the City of Plano, Texas; and providing an effective date.**

**WHEREAS**, the City Council adopted Ordinance No. 2011-6-22 on June 27, 2011, designating a certain area within the City of Plano as Reinvestment Zone No. 123 for tax abatement; and

**WHEREAS**, the City Council finds that there is no longer a need for the reinvestment zone and therefore Ordinance No. 2011-6-22 should be repealed.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:**

**Section I.** The City Council hereby repeals Ordinance No. 2011-6-22.

**Section II.** This Ordinance shall become effective immediately upon its passage and publication as required by law.

**DULY PASSED AND APPROVED** this the 13<sup>th</sup> day of February, 2012.

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Phil Dyer, MAYOR

ATTEST:

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Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

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Diane C. Wetherbee, CITY ATTORNEY



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>				
<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		02/13/2012		
Department:		City Secretary		
Department Head		Diane Zucco		
Agenda Coordinator (include phone #): <b>Sharon Kotwitz X7120</b>				
<b>CAPTION</b>				
An Ordinance of the City of Plano, Texas adopting and enacting Supplement Number 97 to the Code of Ordinances for the City of Plano; providing for amendment to certain sections of the Code; and providing an effective date.				
<b>FINANCIAL SUMMARY</b>				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: <b>2011-2012</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	0	0	<b>0</b>
Encumbered/Expended Amount	0	0	0	<b>0</b>
This Item	0	0	0	<b>0</b>
<b>BALANCE</b>	0	0	0	<b>0</b>
<b>FUND(s):     NA</b>				
<b>COMMENTS:</b> This item has no fiscal impact.				
STRATEGIC PLAN GOAL: Adoption of the Quarterly Code Supplement relates to the City's goal of Financially Strong City with Service Excellence.				
<b>SUMMARY OF ITEM</b>				
Adoption of this ordinance enables this supplement to be admissible in court.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	

**An Ordinance of the City of Plano, Texas adopting and enacting Supplement Number 97 to the Code of Ordinances for the City of Plano; providing for amendment to certain sections of the Code; and providing an effective date.**

**WHEREAS**, the City Council of the City of Plano, Texas adopted a new Code of Ordinances upon adoption of Ordinance No. 87-3-14, on March 9, 1987; and

**WHEREAS**, Sections V and VI of Ordinance No. 87-3-14 provide for amendment to said Code of Ordinances; and

**WHEREAS**, the Code of Ordinances of the City of Plano, Texas has been revised by previous amendments duly passed as individual ordinances by the City Council and such amendments are reflected on Supplement Number 97; and

**WHEREAS**, the City Council wishes to adopt the ordinance codification version appearing in Supplement Number 97 of the Plano Code of Ordinances in order for the printed Code form to be considered identical to the original ordinance and to eliminate any confusion or differences in the format of the original ordinance.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:**

**Section I.** The City Council hereby adopts the printed Code form of the ordinances contained in Supplement Number 97 as prepared by the codifier.

**Section II.** This Ordinance shall become effective immediately upon its passage.

**DULY PASSED AND APPROVED** this the 13th day of February, 2012.

\_\_\_\_\_  
Phil Dyer, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

**DATE:** January 18, 2012  
**TO:** Honorable Mayor & City Council  
**FROM:** Chris Caso, Chairman, Planning & Zoning Commission  
**SUBJECT:** Results of Planning & Zoning Commission Meeting of January 17, 2012

**AGENDA ITEM NO. 6A - PUBLIC HEARING  
ZONING CASE 2011-35  
APPLICANT: HAGGAR-JEZZEEN PARTNERS**

Request to rezone 26.5± acres located 348± feet south of State Highway 121 and 698± feet west of Gillespie Drive **from** Regional Employment and Regional Commercial **to** Single-Family Residence-6. Zoned Regional Employment and Regional Commercial/State Highway 121 Overlay District.

**APPROVED:** 5-3 **DENIED:** \_\_\_\_\_ **TABLED:** \_\_\_\_\_

**LETTERS RECEIVED WITHIN 200 FOOT NOTICE AREA:** **SUPPORT:** 4 **OPPOSE:** 0

**LETTERS RECEIVED OUTSIDE 200 FOOT NOTICE AREA:** **SUPPORT:** 0 **OPPOSE:** 0

**PETITION(s) RECEIVED:** N/A **# OF SIGNATURES:** N/A

**STIPULATIONS:**

Recommended for approval as submitted. The Commissioners voting in opposition to the motion believed that there are many commercial uses that could develop on the property that may not need visibility from State Highway 121 and given the topography of the property. The Commissioners expressed concern regarding access to the residential development would occur through commercial development; the lack of open space and trail connections to the retail development to the west; and that the property is awkward for this type of residential development. Additionally, the Commissioners support the city's Comprehensive Plan recommendation and land use planning policies.

**FOR CITY COUNCIL MEETING OF:** February 13, 2012 (To view the agenda for this meeting, see [www.planotx.org](http://www.planotx.org))

**PUBLIC HEARING - ORDINANCE**

KP/dc

xc: J.M. Hagggar, Jr., Hagggar-Jezzeen Partners  
Thomas Juhn, JBI Partners

**Recommendation of the Planning & Zoning Commission  
Zoning Case 2011-35  
January 17, 2012 Meeting  
Second Vice-Chairman's Report**

**Agenda Item No. 6A – Public Hearing**

**Zoning Case 2011-35** – Request to rezone 26.5± acres from Regional Employment and Regional Commercial to Single-Family Residence-6 located approximately 348 feet south of SH121 and approximately 690 feet west of Gillespie Drive.

**Applicant:** Haggard-Jezzeen Partners

**Staff Recommendation:** Denial since the request is not consistent with the Comprehensive Plan.

**Commission Action:**

After much discussion, a motion was made to recommend denial of the zoning case, which resulted a vote of 4-4. Per the Commission's Rules and Procedures (Section 9.3), failure of a motion to deny shall not constitute approval of the item and further action is required. Consideration of an item is concluded when a motion is approved or a motion to approve fails. Therefore, the Commission re-opened the zoning case and a subsequent motion for approval was made. The motion for approval passed 5-3.

The motion to approve was supported by Chairman Caso and Commissioners Balda, Dry, Hazelbaker, and Smith. Commissioners Cargo, Coleman, and Downs voted against the motion and supported staff's recommendation to deny the application. Comments made in support of the motion to approve included:

- Adjacent to existing Taylor Elementary School to the east.
- Adjacent to existing residential community to the southeast.
- Frisco ISD letter of support for this change of zoning to residential.
- While some Commissioners were not supportive of reducing available commercial land, the existing site creates visibility, topography and access challenges for commercial uses.

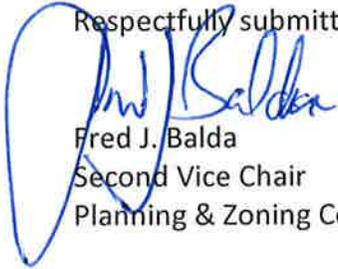
Commissioners in opposition to the motion cited the following comments:

- The proposed use is not consistent with the Comprehensive Plan.
- The northern boundary of this proposed neighborhood violates the written 1200' residential setback policy from the SH121 centerline (as well as the proposed 750' setback policy change supported by the Commission).

- Access to the proposed neighborhood is challenged.
- Lack of open spaces and trail connections to the retail development to the west.
- Property is awkward for this type of residential development.

**Additional Comments:** The concept plan associated with Zoning Case 2011-35 was approved by the Commission 5-3.

Respectfully submitted,



Fred J. Balda  
Second Vice Chair  
Planning & Zoning Commission

CITY OF PLANO  
PLANNING & ZONING COMMISSION

January 17, 2012

**Agenda Item No. 6A**

**Public Hearing:** Zoning Case 2011-35

**Applicant:** Haggar-Jezzeen Partners

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**DESCRIPTION:**

Request to rezone 26.5± acres located 348± feet south of State Highway 121 and 698± feet west of Gillespie Drive **from** Regional Employment and Regional Commercial **to** Single-Family Residence-6. Zoned Regional Employment and Regional Commercial/State Highway 121 Overlay District.

**REMARKS:**

The applicant is requesting to rezone 26.5± acres located 348± feet south of State Highway 121 and 698± feet west of Gillespie Drive from Regional Employment and Regional Commercial to Single-Family Residence-6.

The current zoning on the eastern 17.4± acres of this property is Regional Employment (RE) and the zoning on the western 9.2± acres of this property is Regional Commercial (RC). The RE district is intended to provide for office and limited manufacturing uses that are consistent with the regional status of certain tollways and expressways serving Plano and surrounding communities. Some retail uses are also appropriate when developed in conjunction with the primary uses. The district's standards are designed to ensure compatibility between the various uses within a corridor and surrounding residential neighborhoods. The RC district is intended for use in conjunction with an RE district. It provides for retail and service uses at appropriate nodes within the corridor of specified tollways and expressways serving Plano and surrounding communities, in addition to office and limited manufacturing uses. The district's standards are designed to ensure compatibility between various uses within a corridor and surrounding residential neighborhoods.

The requested zoning is Single-Family Residence-6 (SF-6). The SF-6 district is intended to provide for small-lot, urban, single-family development protected from excessive noise, illumination, odors, visual clutter, and other objectionable influences to family living.

A concept plan accompanies this request as Agenda Item 6B.

## **Surrounding Land Use and Zoning**

Adjacent properties to the west of this tract are developed with retail uses and are zoned RC. To the north the property is undeveloped and is zoned RC and RE. To the east the property is developed as an elementary school and is zoned Single-Family Residence-9 (SF-9). To the southwest the property is developed as garden-style apartments (zoned Planned Development-45-Multifamily-2) and to the southeast the property is developed as single-family residential (zoned Planned Development-152-Patio Home).

## **Conformance to the Comprehensive Plan**

**Future Land Use Plan** - The Future Land Use Plan designates this property as Major Corridor Development (MCD). The city's current land use policies recommend that land along expressway corridors be reserved for economic development and future employment opportunities. The requested SF-6 zoning is not in conformance with these policies.

**Housing Density Policy Statement** - The policy statement recommends no residential development within 1,200 feet of the centerline of State Highway 121. This provision was established to buffer residential uses from the expressway in order to promote a livable residential environment. The 1,200 foot setback addresses several issues related to the proximity of residential development to major expressways. It recognizes that noise and other environmental impacts of living near these facilities. Related to this, the setback lessens the need for costly sound walls if improvements to the expressway are made in the future. It also helps to reserve land in major corridors for commercial and employment uses. At the northernmost boundary, the proposed project is 518± feet from the centerline of State Highway 121.

The Commission revisited the 1,200 foot residential setback policy in September 2011 and recommended that the setback be reduced to 750 feet, as measured from the State Highway 121 centerline. Staff has not discussed this policy revision with the City Council to determine whether or not the Council supports modifying this policy.

**Infill Housing Policy Statement** - The Infill Housing Policy recommends that infill housing be adjacent to or be in close proximity to existing residential development to take advantage of existing amenities. Along the southeast boundary, the subject property is adjacent to an existing single-family residential development Planned Development-152-Patio Home. The proposed site is adjacent to Frisco Independent School District's Taylor Elementary School but does not have access to other amenities typical to traditional single-family neighborhoods such as a neighborhood park.

**Rezoning to Meet Demand Policy Statement** - The Rezoning to Meet Demand Policy recommends that areas to be rezoned for single-family development be an extension of an existing residential neighborhood with a standard that it is not separated from the neighborhood by a Type "C" thoroughfare or larger. While this proposed development appears to be an extension of an existing neighborhood due to land use adjacency, the neighborhoods are not physically connected by any streets. Streets within the existing neighborhood were not extended to the subject property in anticipation of non-residential development occurring on the subject property.

The policy also notes that conversion of a property to residential use should be to provide for an appropriate transition between residential and nonresidential uses. The subject tract would be more suitable for nonresidential uses; this would provide a better buffer between State Highway 121 and the existing multifamily and single-family residential uses to the south. Additionally, the proposed single-family development at this location introduces housing in an area where adjacent properties to the west are zoned and developed for nonresidential uses.

**Access** – The subject property currently only has one access point, which is from National Drive (built perpendicular to the eastern boundary). On the accompanying concept plan, the applicant has proposed an extension of National Drive generally along the north side of the subject property, as well as a second street connection running from the subject property north to provide access to State Highway 121. Even with the proposed streets, residential development in this area will have poor access.

**Adequacy of Public Facilities** - Water and sanitary sewer services are available to serve the subject property. However, the applicant will need to verify that the sanitary sewer capacity is sufficient to accommodate the proposed change in use from commercial to single-family residential.

**Traffic Impact Analysis (TIA)** - A TIA is not required for this request.

**School Capacity** – The proposed neighborhood is located in Frisco Independent School District (FISD). Based on current alignments, students would feed into Taylor Elementary, Fowler Middle School, and Liberty High school. FISD has determined that adequate capacity exists at these schools.

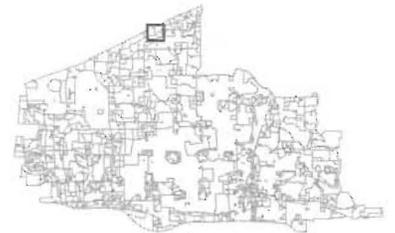
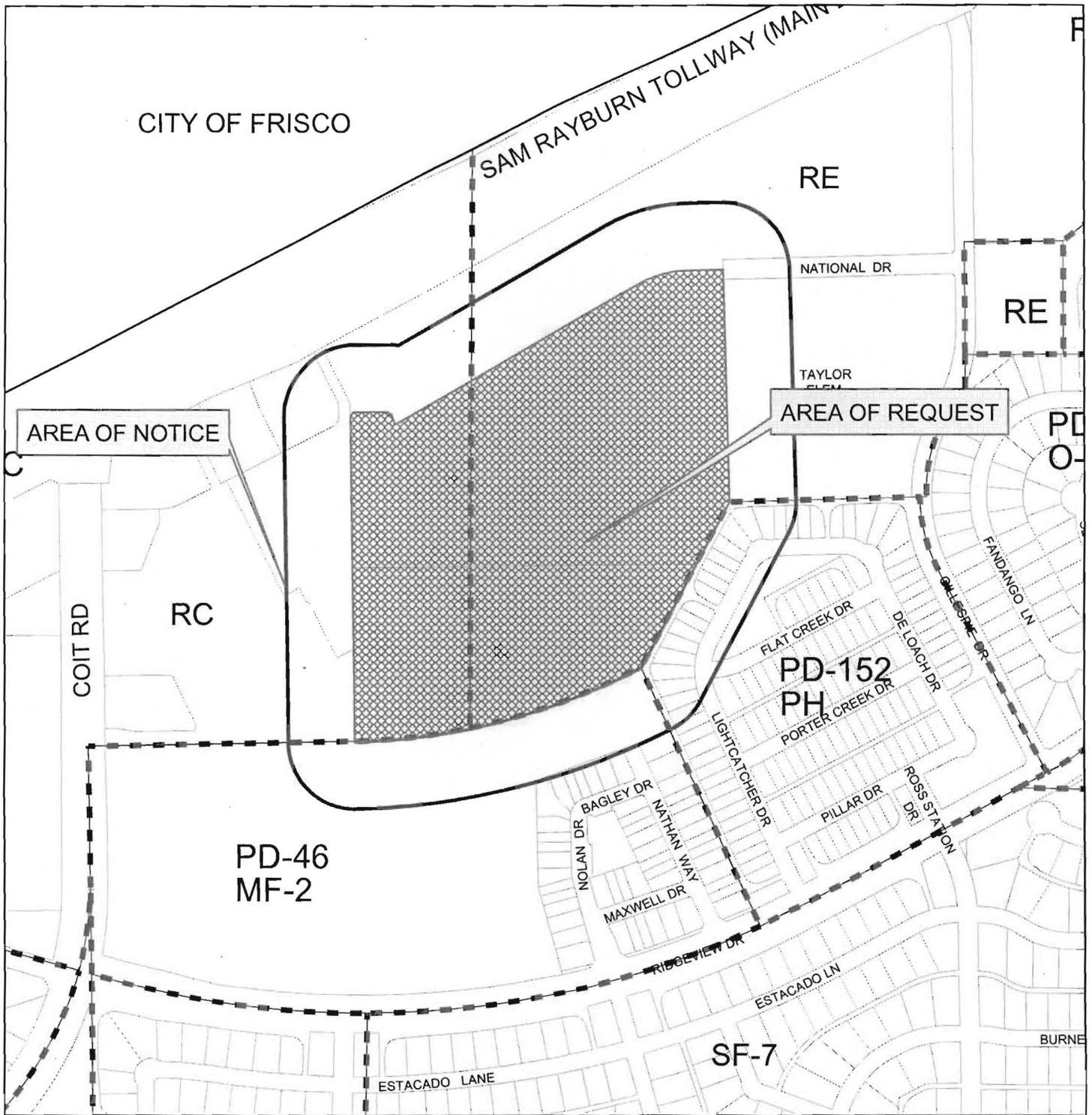
### **Summary**

The applicant is requesting to rezone an undeveloped 26.5± acre tract from RE and RC to SF-6 for single-family residential development. The request is not in conformance with the Future Land Use Plan of the Comprehensive Plan, and it is not consistent with the city's land use policies regarding the preservation of land within major expressway corridors and employment centers for economic development and employment opportunities. The request is not consistent with the Housing Density, Infill Housing and Rezoning to Meet Demand policy statements. The development lacks connections to other residential neighborhoods and has poor access. Overall, staff believes the proposed location is not appropriate for single-family uses.

The current RE and RC zoning provides options for numerous commercial uses that are more suitable at this location than residential development. Single-family uses at the proposed location will not be the best and appropriate use for the site. Therefore, staff recommends denial of the requested rezoning from RE and RC to SF-6.

**RECOMMENDATIONS:**

Staff recommends denial of the proposed rezoning request since the request is not consistent with established goals of the Comprehensive Plan.



Zoning Case #: 2011-35

Existing Zoning: REGIONAL EMPLOYMENT & REGIONAL COMMERCIAL/  
STATE HIGHWAY 121 OVERLAY DISTRICT

○ 200' Notification Buffer







## Zoning Case 2011-35

An Ordinance of the City of Plano amending the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to rezone 26.5± acres out of the McKinney and Williams Survey, Abstract No. 650, located 348± feet south of State Highway 121 and 698± feet west of Gillespie Drive in the City of Plano, Collin County, Texas, from Regional Employment and Regional Commercial to Single-Family Residence-6; directing a change accordingly in the official zoning map of the City; and providing a publication clause, a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date.

**WHEREAS**, the City Secretary of Plano, Texas, directed that notices of a hearing be issued, as required by the Zoning Ordinance of the City of Plano and laws of the State of Texas, at a meeting of the City Council, to be held on the 13th day of February, 2012, for the purpose of considering rezoning 26.5± acres out of the McKinney and Williams Survey, Abstract No. 650, located 348± feet south of State Highway 121 and 698± feet west of Gillespie Drive in the City of Plano, Collin County, Texas, from Regional Employment and Regional Commercial to Single-Family Residence-6; and

**WHEREAS**, the City Secretary of the said City accordingly caused to be issued and published the notices required by its Zoning Ordinance and laws of the State of Texas applicable thereto, the same having been published in a paper of general circulation in the City of Plano, Texas, at least fifteen (15) days prior to the time set for such hearing; and

**WHEREAS**, the City Council of said City, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the aforesaid change in the Zoning Ordinance, on the 13th day of February, 2012; and

**WHEREAS**, the City Council is of the opinion and finds that such rezoning would not be detrimental to the public health, safety, or general welfare, and will promote the best and most orderly development of the properties affected thereby, and to be affected thereby, in the City of Plano, and as well, the owners and occupants thereof, and the City generally.

**IT IS, THEREFORE, ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:**

**Section I.** The Comprehensive Zoning Ordinance No. 2006-4-24, as the same has been heretofore amended, is hereby further amended so as to rezone 26.5± acres out of the McKinney and Williams Survey, Abstract No. 650, located 348± feet south of State Highway 121 and 698± feet west of Gillespie Drive in the City of Plano, Collin County, Texas, from Regional Employment and Regional Commercial to Single-Family Residence-6, said property being described in the legal description on Exhibit "A" attached hereto.

**Section II.** It is directed that the official zoning map of the City of Plano (which is retained in electronic record format) be changed to reflect the zoning classification established by this Ordinance.

**Section III.** All provisions of the ordinances of the City of Plano in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Plano not in conflict with the provisions of this Ordinance shall remain in full force and effect.

**Section IV.** The repeal of any ordinance or part of ordinances affected by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinance at the time of passage of this Ordinance.

**Section V.** Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

**Section VI.** It is the intention of the City Council that this Ordinance, and every provision hereof, shall be considered severable, and the invalidity or partial invalidity of any section, clause or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

**Section VII.** This Ordinance shall become effective immediately upon its passage and publication as required by law.

**PASSED AND APPROVED THIS THE 13TH DAY OF FEBRUARY, 2012.**

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Phil Dyer, MAYOR

ATTEST:

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Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

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Diane C. Wetherbee, CITY ATTORNEY

ZONING CASE 2011-35

BEING a 26.69 acre parcel of land located in the City of Plano, Collin County, Texas, a part of the McKinney and Williams Survey, Abstract Number 650, and being a part of a tract of land described in a special warranty deed from J.M. Hagggar-Jezzeen Partners as recorded in Volume 3048, Page 380, Collin County Deed Records, and being a part of a tract of land described in a special warranty deed from J. M. Hagggar Trusts to Hagggar-Jezzeen Partners as recorded in Volume 3048, Page 292, Collin County Deed Records, and being further described as follows:

BEGINNING at a point for corner in the center of National Drive, said point being North,  $01^{\circ} 31' 02''$  West, 30.00 feet from the northwest corner of Lot 1, Block A, Portia Taylor Elementary School Addition, an addition to the City of Plano as recorded in Volume 2006, Page 356, Collin County Plat Records;

THENCE South,  $01^{\circ} 31' 02''$  East, 693.52 feet to the southwest corner of said Portia Taylor Elementary School Addition, said point being in the north line of Ridgeview Villas Addition, an addition to the City of Plano as recorded in Cabinet R, Page 174, Collin County Plat Records;

THENCE South,  $28^{\circ} 03' 05''$  West, 564.71 feet to the northwest corner of said Ridgeview Villas Addition;

THENCE South,  $24^{\circ} 48' 45''$  East, 0.38 feet to the northeast corner of Lot 1R, Block 1, Coit/Ridgeview Apartments Addition, an addition to the City of Plano as recorded in Volume 2009, Page 282, Collin County Plat Records;

THENCE Southwesterly, 898.03 feet along a curve to the right in the north line of said Coit/Ridgeview Apartments Addition, said curve having a central angle of  $25^{\circ} 43' 35''$ , a radius of 2,000.00 feet, a tangent of 456.71 feet, and whose chord bears South  $75^{\circ} 42' 30''$  West, 890.50 feet to the southeast corner of Signature Plaza Addition, an addition to the City of Plano as recorded in Cabinet Q, Page 158, Collin County Plat Records;

THENCE North,  $00^{\circ} 45' 04''$  West, 973.60 feet along the east line of said Signature Plaza Addition to a point for corner;

THENCE North,  $41^{\circ} 15' 57''$  East, 15.15 feet to a point for corner;

THENCE North,  $89^{\circ} 14' 56''$  East, 101.12 feet to a point for corner;

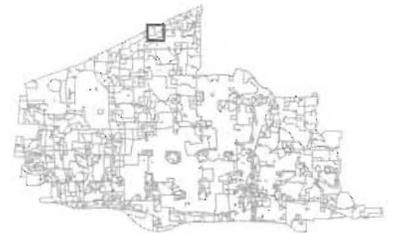
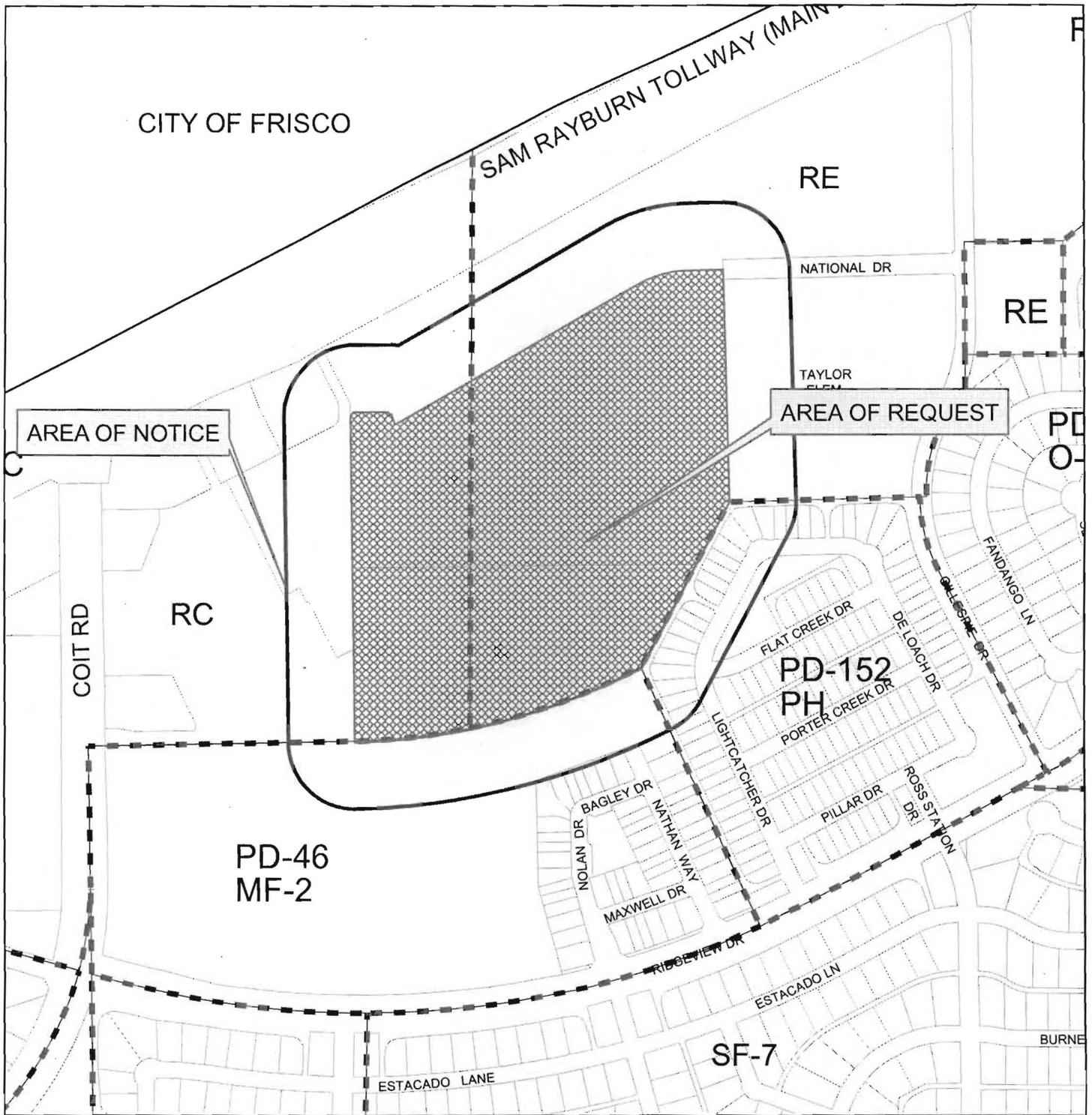
THENCE South,  $55^{\circ} 51' 01''$  East, 16.53 feet to a point for corner;

THENCE South,  $19^{\circ} 07' 32''$  East, 30.14 feet to a point for corner;

THENCE North,  $60^{\circ} 12' 38''$  East, 847.08 feet to a point for corner;

THENCE Northeasterly, 148.03 feet along a curve to the right which has a central angle of  $28^{\circ} 16' 20''$ , a radius of 300.00 feet, a tangent of 75.56 feet, and whose chord bears North,  $74^{\circ} 20' 48''$  East, 146.54 feet to a point for corner;

THENCE North,  $88^{\circ} 28' 58''$  East, 111.88 feet east to the POINT OF BEGINNING and CONTAINING 26.69 acres of land.



Zoning Case #: 2011-35

Existing Zoning: REGIONAL EMPLOYMENT & REGIONAL COMMERCIAL/  
STATE HIGHWAY 121 OVERLAY DISTRICT

○ 200' Notification Buffer



